S. 2931 — S. 2998 — S. 2893

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2931

TO PROVIDE FOR THE DISPOSITION OF FUNDS APPROPRIATED TO PAY A JUDGMENT IN FAVOR OF THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 271, AND FOR OTHER PURPOSES

S. 2998

TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN LANDS IN TRUST FOR THE LAS VEGAS PAIUTE TRIBE

S. 2893

TO SETTLE CERTAIN INDIAN LAND CLAIMS WITHIN THE STATE OF FLORIDA, AND FOR OTHER PURPOSES

DECEMBER 7, 1982
WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
16-864 O WASHINGTON: 1983

5941-8

SELECT COMMITTEE ON INDIAN AFFAIRS

WILLIAM S. COHEN, Maine, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
MARK ANDREWS, North Dakota	DANIEL K. INOUYE, Hawaii
SLADE GORTON, Washington	DENNIS DECONCINI, Arizona

TIMOTHY C. WOODCOCK, *Staff Director*

CONTENTS

	Page
S. 2931	2
S. 2998	6
S. 2893	10

WITNESSES

Atwater, Rich, Assistant to the Assistant Secretary of Land and Water, Department of the Interior	70
Beckham, Dr. Stephen Dow, professor of history, Lewis & Clark College, Portland, Oreg	58
Prepared statement	59
Bond, Thomas, trust officer for the Eastern Area Office, Bureau of Indian Affairs	88
Cannon, Howard W., a U.S. Senator from the State of Nevada, prepared statement	87
Chiles, Lawton, a U.S. Senator from the State of Florida, prepared statement	93
Dean, S. Bobo, attorney for the Miccosukee Tribe of Indians of the State of Florida	95
Eckstein, Michael, realty officer, Western Nevada Agency, Carson City, Nev	86
Fritz, John W., Deputy Assistant Secretary for Indian Affairs, Department of the Interior	22, 70, 88
Prepared statement	24
Frye, Billy J., chairman, Las Vegas Paiute Tribal Council, Las Vegas, Nev	74
Prepared statement	75
Hawkins, Paula, a U.S. Senator from the State of Florida, prepared statement	96
Henry, Margaret, vice chairwoman, Las Vegas Paiute Tribal Council, Las Vegas, Nev	74
Laxalt, Paul, a U.S. Senator from the State of Nevada, prepared statement	88
Patrick, Carmen, tribal council member, Las Vegas Paiute Tribal Council, Las Vegas, Nev	74
Pennington, Bob, Chief of Tribal Services Branch, Bureau of Indian Affairs	22
Ray, Dr. Verne F., counsulting anthropologist to the Cowlitz Indian Tribe	60
Prepared statement	61
Tiger, Buffalo, chairman, Miccosukee Tribe of Indians of Florida, prepared statement	92
Tucker, Ken, deputy attorney general, State of Florida	95
Williams, Marsha, vice chairperson, Cowlitz General Council, Tacoma, Wash	25
Prepared statement	27

S. 2931 — S. 2998 — S. 2893

DECEMBER 7, 1982

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 2:25 p.m., in room 4232, Dirksen Senate Office Building, Senator Slade Gorton (acting chairman) presiding.

Present: Senator Gorton.

Staff present: Timothy Woodcock, staff director; Peter Taylor, general counsel; and John Chaves, staff attorney.

Senator GORTON. Good afternoon. Today, the committee will be taking testimony on S. 2931, the Cowlitz judgment fund distribution bill; S. 2998, the Las Vegas Paiute land bill; and S. 2893, the Florida Indian land claims settlement bill.

Any written statements which the witnesses wish to make part of the record will be so included.

In the interest of time, if the witnesses would summarize their written statements, we would be able to maximize our time. I think that is very, very important. We do have a deadline. If anyone takes too long, there are likely to be others who will not have any time at all.

At this point, I will place a copy of S. 2931, S. 2998, and S. 2893 in the hearing record.

[The bills follow. Testimony begins on p. 22.]

II

97TH CONGRESS
2D SESSION

S. 2931

To provide for the disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218 and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17 (legislative day, SEPTEMBER 8), 1982

Mr. GORTON (for himself and Mr. JACKSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide for the disposition of funds appropriated to pay a judgment in favor of the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218 and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the funds appropriated by the Act of July 1, 1973 (87 Stat. 99), to pay a judgment to the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218, together with the interest thereon, after payment of attorney fees and litigation expenses, shall be distributed as provided herein.

SEC. 2. (a) The Secretary of the Interior shall prepare a roll of all persons—

(1) who were born on or prior to and living on the date of this Act;

(2) who are lineal descendants, of one-sixteenth degree or more of Cowlitz blood, of members of the Cowlitz Tribe of Indians as it existed in 1863; and

(3) whose name or the name of a lineal ancestor appears as a Cowlitz Indian on the rolls prepared by Charles Roblin, census rolls or other record or evidence acceptable to the Cowlitz Indian Tribe and the Secretary of the Interior.

(b) No person shall be enrolled pursuant to this section if such person has shared in or is eligible to share in per capita distribution of a judgment against the United States recovered by any other tribe, except through inheritance, nor shall any person be so enrolled if such person is currently enrolled as a member of any other Indian tribe.

(c) Any enrolled member of the Yakima Tribe (who have continued their interest and support of the Cowlitz Tribe) otherwise eligible under subsections (a) and (b) of this section, shall not be precluded from per capita distribution by this subsection.

(d) Applications for enrollment must be filed in the manner and within the time limits prescribed by the Secre-

tary for that purpose (not to exceed one year). The determination of the Cowlitz Tribal Council, in consultation with the Secretary regarding the utilization of available rolls and records and eligibility for enrollment of an application shall be final.

SEC. 3. The funds authorized to be distributed herein shall be distributed as follows:

(a) The Secretary shall set aside 20 per centum of the judgment award and interest accrued thereon, prior to per capita distribution, for lawful purposes authorized by the Cowlitz Tribal Council and the purchase of land for the Cowlitz Tribe. Sites and uses of said land to be subject to the approval of the Cowlitz Tribe. Said funds are to be made available immediately for the purchase of land in fee patent until such time as the tribe becomes federally recognized or acknowledged, at which time the land becomes the Cowlitz Reservation to be taken in trust for the tribe by the Department of the Interior.

(b) The balance shall be distributed by the Secretary per capita to those eligible to participate in the distribution. Sums payable to living enrollees or adult heirs of deceased enrollees shall be paid directly to such persons. Sums payable to living enrollees who are minors or under legal disabilities shall be paid in accordance with such procedures as the Sec-

retary of the Interior determines appropriate to protect the best interests of such persons.

SEC. 4. None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes or inheritance tax and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under Social Security Act, in accordance with section 7 of the Act of October 19, 1983 (87 Stat. 466).

○

97TH CONGRESS
2D SESSION

S. 2998

To declare that the United States holds certain lands in trust for the Las Vegas Paiute Tribe.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 8), 1982

Mr. CANNON (for himself and Mr. LAXALT) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To declare that the United States holds certain lands in trust for the Las Vegas Paiute Tribe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subject to the provisions of subsection (b), all right, title, and interest of the United States in the following lands (including all improvements thereon and appurtenances thereto) located in Las Vegas, Clark County, Nevada, are hereby declared to be held by the United States in trust for the benefit and use of the Las Vegas Paiute Tribe and are hereby declared to be part of the Las Vegas Paiute Reservation:

Township 18 south, range 59 east, Mount Diablo base line and meridian, section 36, 640 acres more or less, excepting therefrom that certain strip of land 400 feet in width bearing northwesterly through said section for the purposes of right-of-way for United States Highway numbered 95. Reservations, restrictions, and conditions, if any; rights-of-way and assessors either of record or actually existing on said premises.

Township 18 south, range 59 east, Mount Diablo base line and meridian, section 35, 640 acres more or less, excepting therefrom that certain strip of land 400 feet in width bearing northwesterly through said section for the purposes of right-of-way for United States Highway numbered 95. Reservations, restrictions, and conditions, if any; rights-of-way and assessors either of record or actually existing on said premises.

Township 18 south, range 59 east, Mount Diablo base line and meridian, section 26, 640 acres more or less, excepting therefrom that certain strip of land 400 feet in width bearing northwesterly through said section for the purposes of right-of-way for United States Highway numbered 95. Reservations, restrictions, and conditions, if any; rights-of-way and assessors either of record or actually existing on said premises.

Township 18 south, range 59 east, Mount Diablo base line and meridian, section 27, 640 acres more or less, excepting therefrom that certain strip of land 400 feet in width bearing northwesterly through said section for the purposes of right-of-way for United States Highway numbered 95. Reservations, restrictions, and conditions, if any; rights-of-way and assessors either of record or actually existing on said premises.

Township 18 south, range 59 east, Mount Diablo base line and meridian, section 25, 640 acres more or less, reservations, restrictions, and conditions, if any; rights-of-way and assessors either of record or actually existing on said premises.

Township 18 south, range 59 east, Mount Diablo base line and meridian, section 34, 640 acres more or less, reservations, restrictions, and conditions, if any; rights-of-way and assessors either of record or actually existing on said premises.

(b) Nothing in this section shall deprive any person of any right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in land described in subsection (a) on the date preceding the date of enactment of this Act.

(c) The second sentence of subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C.

415), as amended, is further amended by striking out "the Moapa Indian reservation," and inserting in lieu thereof "the Moapa Indian Reservation, the Las Vegas Paiute Reservation,".

(d) Section 164 of the Act of July 14, 1955 (69 Stat. 322, 42 U.S.C. 7474), as amended, shall be applied without regard to the provisions of subsection (a).

○

II

97TH CONGRESS
2D SESSION

S. 2893

To settle certain Indian land claims within the State of Florida, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10 (legislative day, SEPTEMBER 8), 1982

Mr. CHILES (for himself and Mrs. HAWKINS) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To settle certain Indian land claims within the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Florida Indian Land Claims Settlement Act of 1982".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. Congress finds and declares that—

(1) there is pending before the United States District Court for the Southern District of Florida a lawsuit by the Miccosukee Indian Tribe which involves certain lands within the State of Florida;

(2) the pendency of such lawsuit may result in economic hardships for residents of the State of Florida by clouding the titles to lands in the State, including lands not now involved in the lawsuits;

(3) the pendency of such lawsuit also has clouded the easement rights of the South Florida Water Management District in lands necessary for use as a water flowage and storage area, which is part of a federally authorized project for flood control and water management in central and southern Florida, and which is being used to provide and regulate a water supply for the residents of South Florida;

(4) the State of Florida and the Miccosukee Indian Tribe have executed agreements for the purposes of resolving tribal land claims and settling such lawsuit, which agreements require implementing legislation by the Congress of the United States and the Legislature of the State of Florida; and

(5) Congress shares with the parties to such agreements a desire to settle such Indian claims in the State of Florida without additional cost to the United States.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "Miccosukee Tribe" means the Miccosukee Tribe of Indians of Florida, a tribe of American Indians recognized by the United States and organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476) and recognized by the State of Florida pursuant to chapter 285, Florida Statutes.

(2) The term "State of Florida" means the State of Florida, its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions, and the South Florida Water Management District.

(3) The term "Secretary" means the Secretary of the Interior.

(4) The term "lands or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(5) The term "lawsuit" means the action in the United States District Court for the Southern District of Florida, entitled Miccosukee Tribe of Indians of Florida against State of Florida, et al., Case No. 79–253–CIV–JWK.

(6) The term "Lease Agreement" means that perpetual lease granted by the State of Florida to the Miccosukee Tribe, involving a specifically described area in South Florida, title to which is held by the State of Florida and in which the Miccosukee Tribe is granted certain express rights and interests.

(7) The term "settlement funds" means those amounts of money which the State of Florida has agreed to pay to the Miccosukee Tribe under the Settlement Agreement in partial consideration for the settlement of the lawsuit and the extinguishment of rights to all potential or unsettled claims which the Miccosukee Tribe may have to lands or natural resources in the State of Florida.

(8) The term "Settlement Agreement" means those documents entitled "Settlement Agreement between the Miccosukee Tribe and the State of Florida" executed on April 16, 1982, by representatives of the State of Florida and representatives of the Miccosukee Tribe and filed with the secretary of state of the State of Florida which incorporate the Lease Agreement described in paragraph (6) of this section.

(9) The term "transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to

effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of lands or natural resources.

FINDINGS BY THE SECRETARY

SEC. 4. Section 5 of this Act shall not take effect until the Secretary finds that the following events have occurred:

(1) the State of Florida has enacted legislation appropriating sufficient money to pay, and in fact has paid, the settlement funds to the Miccosukee Tribe;

(2) the State of Florida and the Miccosukee Tribe have executed the Lease Agreement; and

(3) the State of Florida has enacted appropriate legislation to carry out its commitments under paragraph 1b of the Settlement Agreement between the State of Florida and the Miccosukee Tribe and has given the waiver specified in paragraph 4d of such Agreement.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF CLAIMS AND ABORIGINAL TITLE INVOLVING FLORIDA INDIANS

SEC. 5. (a) If the Secretary finds that the State of Florida has satisfied the conditions set forth in section 4 of this Act, he shall publish such findings and the Settlement Agreement in the Federal Register, and upon such publication—

(1) the transfers, waivers, releases, relinquishments, and other commitments made by the Miccosukee Tribe in paragraph 3 of the Settlement Agreement between the State of Florida and the Miccosukee Tribe shall be of full force and effect on the terms and conditions therein stated; and

(2) the transfers, waivers, releases, relinquishments, and other commitments validated by paragraph (1) of this subsection and the transfers and extinguishments approved and validated by paragraphs (1) and (2) of subsection (b) shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Act of July 22, 1790 (1 Stat. 137) and any amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfers effective as of the date of such transfers.

(b)(1) All claims to lands within the State of Florida based upon aboriginal title by the Miccosukee Tribe, or any predecessor or successor in interest, are hereby extinguished, and any transfer of lands or natural resources located anywhere within the State of Florida, including but not limited

to transfers pursuant to the statute or treaty of or with any State or the United States, by, from, or on behalf of the Miccosukee Tribe, or any predecessor or successor in interest, shall be deemed to be in full force and effect: *Provided, however,* That nothing herein shall be construed as extinguishing any aboriginal right, title, interest, or claim to lands or natural resources solely to the extent of the rights or interests defined as "excepted interests" in paragraph 3c of the Settlement Agreement between the State of Florida and the Miccosukee Tribe.

(2) By virtue of the approval of a transfer of lands or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Miccosukee Tribe, arising subsequent to the transfer and based upon any interest in or right involving such lands or natural resources, including but not limited to claims for trespass damages or claims for use and occupancy, shall be regarded as extinguished as of the date of the transfer.

(3) Notwithstanding any other provision of this subsection, nothing in this Act shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State of Florida by any individual Indian—

(A) which is based on use and occupancy, or

(B) which was acquired under Federal or State law,

and which is not derived from or through the Miccosukee Tribe, or its predecessor or predecessors in interest.

SPECIAL PROVISIONS FOR MICCOSUKEE TRIBE

SEC. 6. (a) The leasehold interest granted the Miccosukee Tribe under the Lease Agreement shall be exempt from all State and local taxes.

(b) The lands leased to the Miccosukee Tribe pursuant to the Lease Agreement shall be treated as if such lands constituted a federally recognized Indian reservation solely for purposes of determining the eligibility of the Miccosukee Tribe and its members for any Federal health, education, employment, economic assistance, revenue sharing, law enforcement over Indians, or social welfare programs, or any other similar Federal program for which Indians are eligible because of their status as Indians and of their residence on an Indian reservation.

(c) The State of Florida, through exercise of the power of eminent domain, may take or diminish any interest granted to the Miccosukee Tribe under the Lease Agreement only for a public purpose and upon payment of just compensation, but such taking or diminution shall not require the approval of Congress or any executive officer of the United States.

(d) Nothing in this Act or in any grant of leasehold rights by the State of Florida under the Lease Agreement shall affect or otherwise impair in any adverse manner any benefits received by the State of Florida under the Act of September 2, 1937 (16 U.S.C. 669 et seq.), or the Act of August 9, 1950 (16 U.S.C. 777 et seq.).

SEC. 7. Nothing in this Act shall grant to the Miccosukee Tribe any greater rights or interests in the leased area other than those expressly set forth in the Lease Agreement, and, notwithstanding any other provision of this Act, nothing in this Act shall diminish, modify, or otherwise affect the extent of the civil and criminal jurisdiction of the State of Florida in the leased area.

SEC. 8. (a) The Secretary is authorized and directed to accept the transfer to the United States, to be held in trust for the use and benefit of the Miccosukee Tribe of Indians of Florida, of the lands authorized to be conveyed to the Miccosukee Tribe by section 285.061, Florida Statutes, and the lands described in Dedication Deed No. 23228 from the Trustees of the Internal Improvement Trust Fund subject to the provisions of section 285.061, Florida Statutes, and of this section.

(b)(1) Notwithstanding the conveyance of any lands by the State of Florida to the United States in trust for the Miccosukee Tribe of Indians of Florida, the assumption of

jurisdiction in favor of the State of Florida contained in section 285.16, Florida Statutes, pursuant to section 7 of the Act of August 15, 1953 (67 Stat. 588), as in effect prior to its repeal, shall continue in full force and effect on such lands unless the State shall retrocede such civil or criminal jurisdiction in whole or in part.

(2)(A) The laws of Florida relating to alcoholic beverages (chapters 561, 562, 563, 564, and 565, Florida Statutes), gambling (chapter 849, Florida Statutes), sale of cigarettes (chapter 210, Florida Statutes), and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State and the State shall have jurisdiction over offenses committed by or against Indians under said laws to the same extent the State has jurisdiction over said offenses committed elsewhere within the State.

(B) Nothing in subparagraph (A) shall permit the exercise of jurisdiction by the State of Florida as to any matter to which section 1162(b) or 1360(b) of title 18, United States Code, applies.

(c)(1) Any transfer of lands under this section shall be subject to all existing leases, easements, and rights-of-way, and all the rights, easements, and reservations in favor of the Central and Southern Florida Flood Control District (now the South Florida Water Management District) and shall not

increase, diminish, modify, or otherwise affect the extent to which chapter 373, Florida Statutes, and its successor laws, have force and effect within such lands.

(2) Any transfer of lands under this section shall not confer upon the Miccosukee Tribe, or upon the lands within the reservation, any additional water rights.

LIMITATIONS OF ACTIONS

SEC. 9. Notwithstanding any other provision of law, any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within one hundred and eighty days after the date of enactment of this Act. An action to contest the constitutionality of this Act may only be brought in the United States District Court for the Southern District of Florida.

REVOCATION OF SETTLEMENT

SEC. 10. In the event the Settlement Agreement between the Miccosukee Tribe and the State of Florida is ever invalidated—

(1) the transfers, waivers, releases, relinquishments, and other commitments made by the Miccosukee Tribe in paragraph 3 of the Settlement Agreement shall no longer be of any force or effect,

(2) section 5 of this Act shall be inapplicable to the lands, interests in lands, or natural resources of the

Miccosukee Tribe and its members as if never enacted, and

(3) the approvals of prior transfers and the extinguishment of claims and aboriginal title of the Miccosukee Tribe otherwise effected by section 5 shall be void ab initio.

○

Senator GORTON. We will proceed with the first witness, Mr. John W. Fritz, from the Department of the Interior.

Without objection, Mr. Fritz' full statement will be made part of the hearing record.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY BOB PENNINGTON, CHIEF OF TRIBAL SERVICES BRANCH, BUREAU OF INDIAN AFFAIRS

Mr. FRITZ. Mr. Chairman, on behalf of the U.S. Department of the Interior, I would like to thank you for the opportunity to present our views on the bill to provide for the disposition of the Cowlitz judgment funds.

With me at the table today is Bob Pennington, Chief of the Branch of Tribal Services of the Bureau of Indian Affairs.

We recommend amendment of S. 2931 with the amendments we suggest.

Essentially, the major impediment to this bill which has disrupted the distribution of the judgment funds has been the identification of the entity with whom the Federal Government can legally fulfill its trust responsibility for the obligation of these funds.

Presently, there is no federally acknowledged organization of Cowlitz descendants and, although there was a petition submitted in 1975 on behalf of the Cowlitz Indian Tribe for such acknowledgment, to date the petition has not been resubmitted pursuant to the new regulations which have been published regarding Federal acknowledgment.

We understand that the petition, however, is currently being worked on.

Our report to this committee, dated November 2, 1982, includes proposed amendments, with explanations for each, to S. 2931. They are contained in my written statement. So, in order to save time, please refer to that statement.

In sum, our proposed amendments would provide that the judgment funds in docket No. 218 be distributed on a per capita descendancy basis.

This concludes the synopsis of my prepared statement.

Mr. Pennington and I will be happy to respond to any questions that you might have.

Senator GORTON. One of the predecessors of the Secretary of the Interior submitted a distribution plan to Congress but caused it later to be withdrawn; I assume, because of lack of support of the tribe at the time.

The reasons for the withdrawal of that bill, do they apply at the present time?

Mr. PENNINGTON. The secretarial plan was withdrawn because there was opposition expressed by many of the Cowlitz people to the proposal.

It has basically been our policy, on a secretarial plan, to send it up if it is noncontroversial and to go the legislative way if there is a controversy so the tribe may have an opportunity to express its opposition.

Senator GORTON. Do you know anything about the formation or the purposes of the sovereign Cowlitz organization?

Mr. FRITZ. I do not, Mr. Chairman.

Maybe Mr. Pennington, who has been with the Bureau for some time, might have some idea with respect to that organization?

Mr. PENNINGTON. Certainly, we have been following that attempted organization, sir.

I am not quite sure I understand your question?

Senator GORTON. Who is involved in it?

Mr. PENNINGTON. Of the what? Of the sovereign tribe?

Senator GORTON. The organization of the tribe.

Mr. PENNINGTON. We dealt primarily with their attorney, Mr. Whittlesey.

Senator GORTON. Has the Cowlitz Tribe or some organization purporting to represent the tribe filed a petition for Federal recognition?

Mr. PENNINGTON. Yes, they did.

Senator GORTON. What is the status?

Mr. PENNINGTON. It was returned for additional information some time ago and has not been resubmitted as of this date.

Senator GORTON. It is not actively before the Department of the Interior at this time?

Mr. PENNINGTON It is not, sir.

Senator GORTON. If the Cowlitz are presently unrecognized, then, obviously, they were unrecognized back in 1974; is that correct?

Mr. FRITZ. That is correct.

Senator GORTON. What is the basis for this Secretary's reluctance to distribute the judgment funds now under those circumstances, if you were willing to do so, or if your predecessors were willing to do so, back in 1974?

Mr. FRITZ. We are still willing to distribute the funds, but we would prefer—and our statement includes a proposed amendment with explanations—to distribute the funds on a per capita basis.

In other words, not going through any organization but on a descendancy basis to individual people who can prove they descend from the Cowlitz nation.

Senator GORTON. Does the Cowlitz tribe, as presently constituted, meet the tribal band, group, pueblo, or community requirements of 25 U.S. Code, section 1401?

Mr. PENNINGTON. That is a question that needs to be decided by the unit that we have set up under Federal acknowledgment. That decision has not been made. It might very well meet the criteria, but that procedure has not been followed.

Senator GORTON. It seems to me that the answer to that is either "yes" or "no."

Do you mean that the answer to that question is "no," as long as there is no federally recognized group? That is, they are not a tribe, band, group or pueblo community under that section of the code? Right now, today, is what I mean. Is that your position?

Mr. FRITZ. Today, pursuant to the congressionally mandated charter of our Federal acknowledgment program, they do not fall within the definitions that you have just mentioned.

Senator GORTON. So, you feel at this point that you are constrained to take the position that you do; that there is not an entity through which, or to which, you can distribute this money?

Mr. FRITZ. Yes.

We feel compelled to distribute it on a per capita individual basis.

Senator GORTON. Then, at least, for the purpose of this bill, why don't we end with you and we will hear from the other witnesses on the subject.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ON S. 2931

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on S. 2931, a bill to provide for the disposition of the Cowlitz judgment funds.

We recommend enactment of S. 2931, with the amendments as we suggest.

S. 2931 would provide for the distribution of funds appropriated to pay a judgment to the Cowlitz Tribe of Indians in Indian Claims Commission docket numbered 218. The bill would set aside 20 percent of the judgment award for purposes authorized by the Cowlitz Tribal Council and for the purchase of land for the tribe. Eighty percent would be distributed per capita to eligible Cowlitz descendants. The Secretary would be required to prepare a roll of all such persons.

On April 12, 1973, the Indian Claims Commission accepted a compromise proposal in docket 218, and awarded the Cowlitz Indians $1,550,000 as compensation for lands taken by the United States on March 20, 1863, without benefit of treaty or compensation. Funds to cover this award were appropriated by the act of July 1, 1973.

Presently, there is no federally recognized successor to the Aboriginal Cowlitz Tribe aggrieved in 1863. A group which identifies itself as "the Tribe of Cowlitz Indians of the State of Washington" was recognized for the purpose of prosecuting the Cowlitz claim against the United States. This organization, however, has not been recognized by the Federal Government as a tribal party.

A second group of Cowlitz descendants self-identified as the "Sovereign Cowlitz" represents a small percentage of the Cowlitz descendants. This group asserts that since the Cowlitz never signed an agreement with the United States, it is still a sovereign, independent political entity and, therefore, is not subject to the laws or jurisdiction of the United States .

A third group derives its Cowlitz ancestry from the Cowlitz who, in the early part of this century, moved from their aboriginal homeland to the Yakima Reservation to take advantage of better employment opportunities. This group represents between 55 and 60 percent of the lineal descendants of the Aboriginal Cowlitz of 1863. The majority of these individuals are presently enrolled members of the Yakima Tribe of the Yakima Reservation, Washington.

A fourth group, are those Cowlitz descendants unaffiliated with any of the above.

Pursuant to the Indian Judgment Funds Act of October 19, 1973, a hearing of record was held on June 1, 1974, at Cowlitz Prairie, Washington. The subject of the hearing was a proposal submitted by "The Tribe of Cowlitz Indians" for the distribution of the judgment funds. This plan was similar, except for the inclusion of the Yakima descendants, to S. 2931. The transcript of the hearing indicates that about half of the 168 persons present favored the plan. The majority of those favoring this proposal were descendants of the Cowlitz who continued to live in the aboriginal area.

Considerable opposition to the plan was voiced at the hearing from those Cowlitz descendants affiliated with the Yakima Tribes. They submitted a resolution, supported by a petition with 194 signatures, calling for a full per capita distribution. An additional 116 individual letters were also sent to the Bureau of Indian Affairs requesting that the judgment funds be distributed on per capita basis to all those who can prove lineal descendancy from the Cowlitz Indians of 1863.

On November 4, 1974, the Secretary submitted a plan for the distribution of the judgment funds to the 94th Congress. The Secretary's plan provided for a per capita distribution of the award to the lineal descendants of the Cowlitz Tribe as it existed in 1863. Due to the controversy generated over the plan and the limited time to consider the proposal before the statutory 60-day period expired, the department withdrew the plan from congressional consideration

at the request of the chairmen of both the Senate and House Committees on Interior and Insular Affairs. Bills similar to that plan were introduced in subsequent Congresses but not enacted.

A major impediment to the distribution of the Cowlitz judgment funds is identifying the entity with whom the Federal Government can legally fulfill its trust responsibility for these funds. Presently, there is no federally-acknowledged organization of Cowlitz descendants. On September 17, 1975, the "Cowlitz Indian Tribe" submitted a petition to the Department for such acknowledgement. Subsequently, final regulations for determining eligibility for Federal acknowledgement were published. The petition was returned to the tribe on January 9, 1979, for revisions in accordance with the procedure outlined in the regulations. To date, the petition has not been resubmitted although we understand it is being worked on.

Our report to this committee dated November 2, 1982, includes proposed amendments with explanations for each to S. 2931 which would:

Delete reference to the "Cowlitz Indian Tribe" since the status of this tribal entity is in question;

Delete the provision for setting aside 20 percent of the award for tribal programming;

Delete the one-sixteenth Cowlitz blood degree limitation for eligibility to participate in the award; and

Delete those provisions which would create an inequity relating to the eligibility of enrolled members of the Yakima Tribe. Other amendments proposed in our report are for clarification and are technical in nature.

In sum, our proposed amendments would provide that the judgment funds in docket 218 be distributed per capita on a descendancy basis.

This concludes my prepared statement and I shall be pleased to respond to any questions the committee may have.

Senator GORTON. Our next witnesses are Marsha Williams, Dr. Verne Ray, and Dr. Stephen Beckham.

Miss Williams?

STATEMENT OF MARSHA WILLIAMS, VICE CHAIRPERSON, COWLITZ GENERAL COUNCIL, TACOMA, WASH.

Ms. WILLIAMS. I am Marsha Williams, vice chairperson of the Cowlitz General Council of the Cowlitz Indian tribe of the State of Washington. I live at 3714 East I Street in Tacoma.

I have written testimony that I would like to have submitted for the record, not only from myself, but from Dr. Stephen D. Beckham and Dr. Verne F. Ray.

I also have two memoranda from our legal counsel here in Washington, D.C., Mr. Dennis J. Whittlesey. I have a pack of resolutions from other Indian organizations which I also would like to have inserted in the record.

Senator GORTON. Each of those will be inserted in the record following your oral testimony.

Ms. WILLIAMS. Thank you very much.

Our bill, S. 2931, asks that funds appropriated to our tribe nearly 10 years ago be distributed according to the formula that has been laid out in statute, which would be 80 percent distributed per capita to the individual members of the tribe and 20 percent be reserved for the use of the tribe.

Over time, our bill has been submitted to Congress several times. I would like to just briefly touch on some of the issues that have been raised in the past and resolve those for you today.

At one point our bill was opposed by a group calling itself the Yakima Cowlitz. These are people of Cowlitz Indian descent who had moved to and, in some cases, have been enrolled on the Yakima

Reservation but who have continued their interest and support to the Cowlitz Tribe over the last hundred years.

We have drawn up a plan with the Yakima Cowlitz group which numbers 388 individuals, to let those people also share in our distribution of funds. So, no longer is there any opposition that we have been able to discern from the Yakima or the Yakima Cowlitz groups.

Regarding the Sovereign Cowlitz; that was a group of Cowlitz tribal members who opposed the distribution—pardon me—the settlement that was proposed in the early 1970's.

That group of people no longer functions. One of their former leaders, Mr. John Barnett, is currently the chairman of the Cowlitz Tribe of Indians.

So, all the members of what was once known as the Sovereign Cowlitz are full-fledged members of the Cowlitz Tribe and will share in any distribution that we receive.

Mr. Fritz' testimony before the House hearing in September mentioned another group of Cowlitz whom he claimed were not related with any tribe and were unaccounted for in our bill.

Let me just say that, as a member of the tribal council, I do not know of any Cowlitz who have not been accepted in the tribe if they have met our requirements for membership. We sit as a group. Every application which is sent to our office is reviewed and is traced back to the roll which was prepared by an Indian agent in 1918, I believe. That is what we use to verify our membership.

So, everyone that we know of, we have researched and accepted into the tribe and they belong.

Finally, it seems to me that the Department of the Interior worries, that by this bill, we will be trying to come in through a back door route to receive Federal recognition.

That is not our intent at all.

The Federal acknowledgment project process, which Mr. Fritz just spoke to you about: we are part of that process right now. It is a process where you have to wait your turn in order to be considered and to have your petition read. We are waiting our turn. Our petition is being finally printed now and will be submitted to the Department of the Interior within the next 60 days.

So, I do not feel that we need to use this bill, S. 2931, to achieve acknowledgment. I believe that we will stand on our own merits in that regard.

Part of the contention of the Department of the Interior seems to be that our tribe does not meet the legal and political requirement tests as successor in interest to the aboriginal Cowlitz Tribe.

The list of agencies—Federal, State, and local—that we have dealt with over the years, over the decades, is included in my written testimony. It includes the Bureau of Indian Affairs itself. The simple Federal recognition is the stickler. But, in every other way, I feel that we have been recognized as a political and legal entity over the years.

Before I conclude my testimony, I would just like to say to you, Senator Gorton, that my tribe and myself appreciate your sponsorship of our bill and your holding hearings here today and giving us a chance to speak.

Thank you very much.

Senator GORTON. You are welcome.

[The material follows. Oral testimony resumes on p. 58.]

PREPARED TESTIMONY OF MARSHA WILLIAMS, VICE CHAIRMAN, COWLITZ INDIAN TRIBE

I am Marsha Williams, Vice Chairman of the Cowlitz Indian Tribe. I live at 3714 East I Street, Tacoma, Washington, not far from the ancestral lands of the Cowlitz Indian Tribe.

My purpose here today is to ask this Committee to act favorably on S. 2931, a bill which would distribute the judgment fund awarded in Indian Claims Commission Docket No. 218 to the Cowlitz Indian Tribe for the taking of its aboriginal lands. Our bill calls for the division of the judgment fund into two parts: 80 percent would go to the people and 20 percent would go to the tribe.

The distribution formula of this bill was adopted by our tribe in 1975, and today it is unanimously supported by those who would participate in the distribution. Thus, I am before you today speaking for people who may disagree among themselves on some matters, but who stand as one in support of S. 2931.

Recognition is not sought by this legislation. In fact, the Cowlitz Tribe would even accept language in the bill which would provide that nothing therein would constitute federal recognition so long as that same provision does not preclude future recognition or participation in the Federal Acknowledgment Project of the United States Department of the Interior. Rather, the tribe would like to use the money for private purposes, including cultural and heritage preservation and general tribal operations. None of these uses should be of any concern to Interior since the money would not be administered, or otherwise accounted for, by Interior.

The money would be private money, in private hands.

This is not the first time our tribe has tried to win legislation which would distribute our money.

Money was appropriated and set aside for our benefit in 1973. Since then, we have tried several times to have the funds distributed in some acceptable manner. Our bill has died or been withdrawn each time, until this year. But we now have waited more than nine (9) years for this distribution and feel that this matter is overdue.

Originally, we were opposed by certain members of the Yakima Indian Nation who were of Cowlitz descent. In 1978, Yakima representatives appeared before the Congress to testify on an earlier version of this same bill. Their complaint was not with the 20 percent set-aside for the tribe, but rather that they should be entitled to participate in the 80 percent per capita distribution.

The Yakima concerns have been addressed in S. 2931. To be specific, the Yakimas themselves have stated that no more than 388 of their members would qualify for a share of our judgment fund.

The bill reflects the compromise we have made to accommodate the concerns and desires of the Yakima Cowlitz, and that is found at Section 2, subsection c. This provision allows for certain members of the Yakima Indian Nation with Cowlitz blood, who have directly supported the Cowlitz Tribe, to participate in the judgment fund distribution. This provision is in addition to our willingness to share our claims award with Yakimas of Cowlitz blood who do not meet the Yakima Tribe's membership requirements.

Every effort is being made to work with our neighboring Yakima brothers of Cowlitz descent who have maintained an interest in our tribe and who have given support to us over the years. This is true even for Yakimas who may have benefitted from the Yakima judgment fund distribution, as well as other Yakima tribal benefits.

Thus, enrolled Yakimas and their unenrolled offspring may share in our judgment fund distribution even though Cowlitz Indians were ignored in the Yakima distribution plan.

Interior has raised the spector of Cowlitz Indians who should be participants in the distribution but would be excluded under S. 2931. Specifically, Interior cites the Yakima Cowlitz—whose claims already have been incorporated into the legaslation, as I just noted—and members of an organization known as the "Sovereign Cowlitz."

In conjunction with this hearing, our attorney has filed with this Committee a Memorandum and supporting affidavits dealing with the "Sovereign Cowlitz" issue. Let me state that it is a false issue. The Sovereign Cowlitz organization was established only to protect the terms of settlement in our Indian Claims Commission case. After the Secretary of the Interior approved the settlement, that organization ceased to function and its members have continued to serve our

Tribe as valuable members. One of the Sovereign Cowlitz organizers was John Barnett, who now serves as our Tribal Chairman and who wholeheartedly supports this legislation.

The important things for me to note about the Sovereign Cowlitz are that (1) every member of that group at all times has been a member of our tribe and will participate in the distribution under S. 2931 and (2) every member of that group supports S. 2931.

So, given the unanimity of our tribe for the plan and the provision for Yakima participation, we believe that there are no valid grounds remaining for objection to our distribution plan, as proposed by this legislation.

Finally, this Committee should know that Interior seems to ignore the fact that our tribe has been dealt with as a tribe by a number of federal, state and local agencies, as well as various Indian organizations. They include U.S. Department of Labor, U.S. Forest Service, Census Bureau, Lewis County (Wash.) Public Utility District, U.S. Administration for Native Americans, U.S. Community Services Administration, Educational Service District No. 121, Washington Energy Office, Evergreen Legal Services, Federal Energy Regulatory Commission, University of Washington, U.S. Office of Native American Programs, U.S. Office of Economic Opportunity, U.S. Indian Claims Commission, City of Tacoma, U.S. Bureau of Indian Affairs, Washington Secretary of State, National Archives, Western Washington Indian Education and Training Consortium (CETA), Small Tribes Organization of Western Washington, U.S. Economic Development Administration, Coalition of Indian Controlled School Boards, Washington Employment Security Department, U.S. Internal Revenue Service, Washington Department of Labor and Industries, Governor's Indian Advisory Committee, Affiliated Tribes of Northwest Indians and National Congress of American Indians.

In light of all of this, we ask this Committee to act favorably on our bill. Thank you.

WHITTLESEY & O'BRIEN, P.C.
ATTORNEYS AT LAW
1607 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D. C. 20009
(202) 483-1800

DENNIS J. WHITTLESEY
LAWRENCE J. O'BRIEN, JR.
SUSAN E. O'KEEFE

PETER J. KIERNAN
OF COUNSEL

November 29, 1982

MEMORANDUM CONCERNING H.R. 3612
AND THE "SOVEREIGN COWLITZ"

Re: Misleading Impressions of John Fritz's Testimony on H.R. 3612.

On September 28, 1982, Deputy Assistant Secretary for Indian Affairs John Fritz testified before the House Committee on Interior and Insular Affairs in opposition to H.R. 3612, as introduced. This legislation proposes a formula by which the Cowlitz Indian Tribe's judgment fund would be distributed.

Mr. Fritz's testimony centered on concern that the bill fails to provide for payments to many people who otherwise are entitled to receive a portion of the fund. In particular, he alluded to an ostensible failure to provide for payment to the members of a group known as the "Sovereign Cowlitz." As is shown below, these Indians already are covered by the legislation.

Attached to this memorandum are two affidavits, which were executed by two principal organizers of the "Sovereign

Cowlitz," John Barnett and Donald Cloquet. These affidavits establish the following facts:

1. The Sovereign Cowlitz organization was formed as a vehicle through which certain Cowlitz tribal members could protest the settlement of the tribe's Indian Claims Commission litigation, which settlement led to Congressional appropriation of the very money to be distributed under H.R. 3612.

2. The Sovereign Cowlitz membership consisted of people also enrolled in the Cowlitz Indian Tribe. Since all Sovereign Cowlitz are Cowlitz tribal members, all of them are eligible to participate in the distribution proposed by H.R. 3612.

3. Neither affiant knows of any "Sovereign Cowlitz" member who opposes the distribution plan of H.R. 3612.

4. The Sovereign Cowlitz organization has not functioned in more than five (5) years and has virtually ceased to exist.

* * *

From these facts, it is clear that the Department of the Interior knew certain things when Mr. Fritz's testimony was being drafted: (a) the Sovereign Cowlitz members were

all members of the Cowlitz Indian Tribe; (b) accordingly, the Sovereign Cowlitz members were included in the distribution proposed by H.R. 3612; and, (c) the Sovereign Cowlitz no longer existed as a functioning organization in light of (i) final approval of the settlement, the opposition of which was the Sovereign Cowlitz's sole function, and (ii) the absence of any activity for many years.

Given the facts, the Cowlitz Indian Tribe submits that Mr. Fritz's testimony should be disregarded by the Congress.

Finally, the Cowlitz Indian Tribe asserts that H.R. 3612 fully has taken into account all individuals eligible for participation in the distribution of its tribal judgment fund. Other than that of the Department of the Interior, there is no known opposition to H.R. 3612. This legislation should be passed.

Dennis J. Whittlesey

Attorney for the
Cowlitz Indian Tribe

AFFIDAVIT OF JOHN BARNETT

State of Washington)
County of Grays Harbor) ss.

JOHN BARNETT, being first duly sworn, desposes and states:

1. I am a member of the Cowlitz Tribe of Indians, and am aware that our Tribe has been actively involved in efforts to promote the Congressional enactment of H. R. 3612, the "Cowlitz Judgment Funds Act." This bill proposes to distribute the judgment fund awarded to the Cowlitz Tribe in Indian Claims Commission Docket No. 218.

2. I understand that the United States Department of the Interior, by and through Deputy Assistant John Fritz, has opposed H. R. 3612 in testimony presented before the House Committee on Interior and Insular Affairs on September 28, 1982. I have reviewed Mr. Fritz's testimony and a copy is attached to this Affidavit.

3. At page 2, Mr. Fritz refers to a group known as the "Sovereign Cowlitz," and asserts that H. R. 3612 fails to provide for the interests of this group's membership.

4. I was an organizer and Vice-Chairman of the Sovereign Cowlitz and find Mr. Fritz's testimony to be incredible.

5. The history of the Sovereign Cowlitz is as follows:

a) The Cowlitz claim in ICC Docket No. 218 was resolved through a settlement, which was a subject of bitter debate within the Cowlitz Tribe.

b) A number of tribal members, including me, felt that the settlement was unfair and strongly opposed its being accepted by the Tribe. However, a majority of the tribal members present at the meeting approved the settlement.

c) This was followed by a federal Hearing held in Tacoma, Washington called by our local Congressional delegates at the urging of an ad hoc group of Cowlitz Tribal members, including me. We voiced strong protests as to the notification, conduct, and voting procedures used at the meeting where the Compromise Settlement was approved. This was to no avail and the settlement was forwarded to the Secretary of the Interior for final approval.

d) Those of us who opposed the terms of the settlement formed the Sovereign Cowlitz out of frustration with our treatment by the Federal Government. This formation took place after the Secretary approved the settlement as proposed and before the first hearing on the distribution of the Judgment Award called by the Department of the Interior.

e) Subsequent to approval of the settlement and the initial distribution hearing, the Sovereign Cowlitz virtually ceased to exist and it is safe to say that the group of perhaps twenty (20) people who made up its membership has not functioned at all in more than five (5) years.

6. The Sovereign Cowlitz was made up of enrolled members of the Cowlitz Tribe, and they are included within the group which supports H. R. 3612 and would receive per capita payments under its plan.

7. I know of no member of the Sovereign Cowlitz group who opposes H. R. 3612. They have "buried the hatchet" with the Cowlitz Tribe and are now united as one.

8. If Mr. Fritz's testimony would have been accurate and up to date, I doubt that the Cowlitz Tribe would have recently elected me to lead them as their Chairman--the position I hold today.

Affidavit of John Barnett
Page three

DATED THIS 25th day of October, 1982

John Barnett
John Barnett

SUBSCRIBED AND SWORN TO before me
this 25 day of October, 1982.

Rose Mc Lenkovich
Notary Public

My commission expires : 12-23-84

Cowlitz

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, HOUSE OF REPRESENTATIVES, ON H.R. 3612, A BILL "TO PROVIDE FOR THE DISPOSITION OF FUNDS APPROPRIATED TO PAY A JUDGMENT IN FAVOR OF THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 218, AND FOR OTHER PURPOSES."

SEPTEMBER 28, 1982

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON H.R. 3612, A BILL TO PROVIDE FOR THE DISPOSITION OF THE COWLITZ JUDGMENT FUNDS.

WE RECOMMEND ENACTMENT OF H.R. 3612, IF AMENDED AS WE SUGGEST.

H.R. 3612 WOULD PROVIDE FOR THE DISTRIBUTION OF FUNDS APPROPRIATED TO PAY A JUDGMENT TO THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMERED 218. THE BILL WOULD AUTHORIZE THE SECRETARY OF THE INTERIOR TO SET ASIDE 20 PERCENT OF THE JUDGMENT AWARD FOR PURPOSES AUTHORIZED BY THE COWLITZ TRIBAL COUNCIL AND FOR THE PURCHASE OF LAND FOR THE TRIBE AND TO DISTRIBUTE THE BALANCE OF THE AWARD PER CAPITA TO THOSE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION. THE SECRETARY WOULD BE REQUIRED TO PREPARE A ROLL OF ALL SUCH PERSONS.

ON APRIL 12, 1973, THE INDIAN CLAIMS COMMISSION ACCEPTED A COMPROMISE PROPOSAL IN DOCKET 218, AND AWARDED THE COWLITZ INDIANS $1,550,000 AS COMPENSATION FOR LANDS TAKEN BY THE UNITED STATES ON MARCH 20, 1863, WITHOUT BENEFIT OF TREATY OR COMPENSATION. FUNDS TO COVER THIS AWARD WERE APPROPRIATED BY THE ACT OF JULY 1, 1973.

PRESENTLY, THERE IS NO FEDERALLY-RECOGNIZED SUCCESSOR TO THE ABORIGINAL COWLITZ TRIBE AGGRIEVED IN 1863. A GROUP WHICH IDENTIFIES ITSELF AS "THE TRIBE OF COWLITZ INDIANS OF THE STATE OF WASHINGTON" WAS RECOGNIZED FOR THE PURPOSE OF PROSECUTING THE COWLITZ CLAIM AGAINST THE UNITED STATES. THIS ORGANIZATION, HOWEVER, HAS NOT BEEN RECOGNIZED BY THE FEDERAL GOVERNMENT AS A TRIBAL PARTY.

A SECOND GROUP OF COWLITZ DESCENDANTS SELF-IDENTIFIED AS THE "SOVEREIGN COWLITZ" REPRESENTS A SMALL PERCENTAGE OF THE COWLITZ DESCENDANTS. THIS GROUP ASSERTS THAT SINCE THE COWLITZ NEVER SIGNED AN AGREEMENT WITH THE UNITED STATES, IT IS STILL A SOVEREIGN, INDEPENDENT POLITICAL ENTITY AND, THEREFORE, IS NOT SUBJECT TO THE LAWS OR JURISDICTION OF THE UNITED STATES.

A THIRD GROUP DERIVES IT COWLITZ ANCESTRY FROM THE COWLITZ WHO, IN THE EARLY PART OF THIS CENTURY, MOVED FROM THEIR ABORIGINAL HOMELAND TO THE YAKIMA RESERVATION TO TAKE ADVANTAGE OF BETTER EMPLOYMENT OPPORTUNITIES. THIS GROUP REPRESENTS BETWEEN 55 AND 60 PERCENT OF THE LINEAL DESCENDANTS OF THE ABORIGINAL COWLITZ OF 1863. THE MAJORITY OF THESE INDIVIDUALS ARE PRESENTLY ENROLLED MEMBERS OF THE YAKIMA TRIBE OF THE YAKIMA RESERVATION, WASHINGTON. A FOURTH GROUP, ARE THOSE COWLITZ DESCENDANTS UNAFFILIATED WITH ANY OF THE ABOVE.

PURSUANT TO THE INDIAN JUDGMENT FUNDS ACT OF OCTOBER 19, 1973, A HEARING OF RECORD WAS HELD ON JUNE 1, 1974, AT COWLITZ PRAIRIE, WASHINGTON. THE SUBJECT OF THE HEARING WAS A PROPOSAL SUBMITTED BY "THE TRIBE OF COWLITZ INDIANS" FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS. THIS PLAN WAS SIMILAR,

EXCEPT FOR THE INCLUSION OF THE YAKIMA DESCENDANTS, TO H.R. 3612. THE TRANSCRIPT OF THE HEARING INDICATES THAT ABOUT HALF OF THE 168 PERSONS PRESENT FAVORED THE PLAN. THE MAJORITY OF THOSE FAVORING THIS PROPOSAL WERE DESCENDANTS OF THE COWLITZ WHO CONTINUED TO LIVE IN THE ABORIGINAL AREA.

CONSIDERABLE OPPOSITION TO THE PLAN WAS VOICED AT THE HEARING FROM THOSE COWLITZ DESCENDANTS AFFILIATED WITH THE YAKIMA TRIBES. THEY SUBMITTED A RESOLUTION, SUPPORTED BY A PETITION WITH 194 SIGNATURES, CALLING FOR A FULL PER CAPITA DISTRIBUTION. AN ADDITIONAL 116 INDIVIDUAL LETTERS WERE ALSO SENT TO THE BUREAU OF INDIAN AFFAIRS REQUESTING THAT THE JUDGMENT FUNDS BE DISTRIBUTED ON A PER CAPITA BASIS TO ALL THOSE WHO CAN PROVE LINEAL DESCENDANCY FROM THE COWLITZ INDIANS OF 1863.

ON NOVEMBER 4, 1974, THE SECRETARY SUBMITTED A PLAN FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS TO THE 94TH CONGRESS. THE SECRETARY'S PLAN PROVIDED FOR A PER CAPITA DISTRIBUTION OF THE AWARD TO THE LINEAL DESCENDANTS OF THE COWLITZ TRIBE AS IT EXISTED IN 1863. DUE TO THE CONTROVERSY GENERATED OVER THE PLAN AND THE LIMITED TIME TO CONSIDER THE PROPOSAL BEFORE THE STATUTORY 60-DAY PERIOD EXPIRED, THE DEPARTMENT WITHDREW THE PLAN FROM CONGRESSIONAL CONSIDERATION AT THE REQUEST OF THE CHAIRMEN OF BOTH THE SENATE AND HOUSE COMMITTEES ON INTERIOR AND INSULAR AFFAIRS. NO ACTION WAS TAKEN ON SIMILAR BILLS INTRODUCED IN SUBSEQUENT CONGRESSES.

A MAJOR IMPEDIMENT TO THE DISTRIBUTION OF THE COWLITZ JUDGMENT FUNDS IS IDENTIFYING THE ENTITY WITH WHOM THE FEDERAL GOVERNMENT CAN LEGALLY FULFILL ITS TRUST RESPONSIBILITY FOR THESE FUNDS. PRESENTLY, THERE IS NO FEDERALLY -

ACKNOWLEDGED ORGANIZATION OF COWLITZ DESCENDANTS. ON SEPTEMBER 17, 1975, THE "COWLITZ INDIAN TRIBE" SUBMITTED A PETITION TO THE DEPARTMENT FOR SUCH ACKNOWLEDGEMENT. SUBSEQUENTLY, FINAL REGULATIONS FOR DETERMINING ELIGIBILITY FOR FEDERAL ACKNOWLEDGEMENT WERE PUBLISHED. THE PETITION WAS RETURNED TO THE TRIBE ON JANUARY 9, 1979, FOR REVISIONS IN ACCORDANCE WITH THE PROCEDURE OUTLINED IN THE REGULATIONS. TO DATE, THE PETITION HAS NOT BEEN RESUBMITTED ALTHOUGH WE UNDERSTAND IT IS BEING WORKED ON.

WE HAVE ATTACHED TO THE STATEMENT PROPOSED AMENDMENTS WITH EXPLANATIONS FOR EACH TO H.R. 3612 WHICH WOULD DELETE REFERENCE TO THE "COWLITZ INDIAN TRIBE" SINCE THE STATUS OF THIS TRIBAL ENTITY IS IN QUESTION; DELETE THE PROVISION FOR SETTING ASIDE 20 PERCENT OF THE AWARD FOR TRIBAL PROGRAMMING; DELETE THE 1/16 COWLITZ BLOOD DEGREE LIMITATION FOR ELIGIBILITY TO PARTICIPATE IN THE AWARD; AND DELETE THOSE PROVISIONS WHICH WOULD CREATE AN INEQUITY RELATING TO THE ELIGIBILITY OF ENROLLED MEMBERS OF THE YAKIMA TRIBE. OTHER AMENDMENTS PROPOSED ARE FOR CLARIFICATION AND ARE TECHNICAL IN NATURE.

IN SUM, OUR PROPOSED AMENDMENTS WOULD PROVIDE THAT THE JUDGMENT FUNDS IN DOCKET 218 BE DISTRIBUTED PER CAPITA ON A DESCENDANCY BASIS.

IF AMENDED AS WE SUGGEST, WE WOULD NOT OBJECT TO THE ENACTMENT OF H.R. 3612.

THIS CONCLUDES MY PREPARED STATEMENT AND I SHALL BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

AMENDMENTS

1. Section 2 of H.R. 3612 would require the Secretary to prepare a roll of all persons eligible to participate in the distribution of judgment funds. Subsection 2(a)(2) would restrict eligibility to those persons with 1/16 degree or more Cowlitz blood. The scarcity of acceptable records on the Cowlitz Indians will make it difficult for many applicants to prove lineal descendancy from the aboriginal group. The only official government-sponsored roll is the "Schedule of Unenrolled Indians" compiled by Special Indian agent Charles Robbin, dated January 1, 1919, some 56 years after the taking date of 1863. The additional requirement to prove a 1/16 blood quantum would further complicate the roll preparation and delay the payment.

   Accordingly, we recommend that the blood degree limitation be deleted and the roll be prepared on a descendancy basis. On page 2, lines 5 and 6 of subsection 2(a)(2), delete the phrase ", of one-sixteenth degree or more of Cowlitz blood,".

2. Section 2(a)(3) would vest the "Cowlitz Indian Tribe" with veto authority concerning the eligibility for inclusion on the Secretary's payment roll. Since the status of the tribal entity is in question, we recommend that the phrase "the Cowlitz Indian Tribe and" be deleted on page 2, line 11 of section 2(a)(3).

3. Section 2(b) would prohibit any person who has shared in or is eligible to share in a judgment award or who is an enrolled member of another tribe from sharing in this award. Section 2(c), however, would exempt enrolled members of the Yakima Tribe (who have continued their interest and support of the Cowlitz Tribe) from this prohibition.

   These two sections would, in effect, eliminate all Cowlitz descendants, regardless of blood quantum with the exception of those members of the Yakima Tribe who have supported the "Cowlitz Tribe". This would create an inequitable situation. Therefore, we recommend that sections 2(b) and 2(c) be deleted. Section 2(a), as amended above, would not preclude any eligible enrolled member of the Yakima Tribe from participating in the distribution. As indicated in our statement, these members of the Yakima Tribe are lineal descendants of those Cowlitz who moved from their aboriginal homeland to the Yakima Reservation to seek better employment opportunities. It is not unusual for persons who are enrolled members of one tribe to share in a per capita distribution as descendants of a different aboriginal entity. The distribution of awards to the Kiowa, Comanche and Apache Tribes under the Act of September 21, 1959 and the Act of September 28, 1968, permitted payment of per capita shares to persons who were eligible as descendants of one entity but were enrolled members of different tribes. A similar situation occurred with the Mississippi Sioux Tribes under the Act of October 25, 1972, and the Otoe-Missouria under the Act of October 14, 1966.

4. Section 2(d) would give the "Cowlitz Tribal Council" the responsibility, in consultation with the Secretary, of determining the rolls to be the basis for eligib'lity on the payment roll. Section 2(d) is similar to section 2(a)(3) in that it would vest the "Cowlitz Tribal Council" with final authority to determine the eligibility for enrollment of an application and the records to be used as the bases of this determination. Again, since the tribal status of this group remains in question, we recommend deletion of section 2(d). This would not, however, preclude representatives of the Cowlitz Indians from expressing their views. The Department's enrollment regulations provide for the review of applications by tribal authorities.

5. Section 3(a) of the bill would provide for 20 percent of the award to be set aside for expenditures authorized by the "Cowlitz Tribal Council" and for the purchase of land. The "Council" would be authorized to purchase land in fee patent. In the event that this group achieves Federal acknowledgment, the land would become the Cowlitz Reservation to be taken into trust by the Department. However, since the "Cowlitz Indian Tribe" does not have a government-to-government relationship with the United States at this time, we recommend that section 3(a) be deleted, thereby providing that all of the judgment funds be distributed per capita. Section 3 would also be amended by deleting the words "as follows:" on page 3, line 7, and the phrase "(b) The balance shall be distributed" on the same page, line 19 for technical consistency.

6. We recommend that a new section be added at the end of the bill to read as follows:

> "Sec. 5. The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this Act."

AFFIDAVIT OF DONALD CLOQUET

State of Washington)
County of Pierce) ss.

DONALD CLOQUET, being first duly sworn, desposes and states:

1. I am a member of the Cowlitz Tribe of Indians, and am aware that our Tribe has been actively involved in efforts to promote the Congressional enactment of H. R. 3612, the "Cowlitz Judgment Funds Act." This bill proposes to distribute the judgment fund awarded to the Cowlitz Tribe in Indian Claims Commission Docket No. 218.

2. I understand that the United States Department of the Interior, by and through Deputy Assistant John Fritz, has opposed H. R. 3612 in testimony presented before the House Committee on Interior and Insular Affairs on September 29, 1982. I have reviewed Mr. Fritz's testimony and a copy is attached to this Affidavit.

3. At page 2, Mr. Fritz refers to a group known as the "Sovereign Cowlitz," and asserts that H. R. 3612 fails to provide for the interests of this group's membership.

4. I was an organizer and Chairman of the Sovereign Cowlitz and find Mr. Fritz's testimony to be incredible.

5. The history of the Sovereign Cowlitz is as follows:

a) The Cowlitz claim in ICC Docket No. 218 was resolved through a settlement, which was the subject of bitter debate within the Cowlitz Tribe.

b) A number of tribal members, including me, felt that the settlement was unfair and strongly opposed its being accepted by the Tribe. However, a majority of the tribal members present at the meeting approved the settlement.

c) This was followed by a Federal Hearing held in Tacoma, Washington called by our local Congressional delegates at the urging of an ad hoc group of Cowlitz Tribal members, including me. We voiced strong protests as to the notification, conduct, and voting procedures used at the meeting where the Compromise Settlement was approved. This was to no avail and the settlement was forwarded to the Secretary of the Interior for final approval.

d) Those of us who opposed the terms of the settlement formed the Sovereign Cowlitz out of frustration with our treatment by the federal government. This formation took place after the Secretary approved the settlement as proposed and before the first hearing on the distribution of the judgment award called by the Department of the Interior.

e) Subsequent to approval of the settlement and the initial distribution hearing, the Sovereign Cowlitz virtually ceased to exist and it is safe to say that the group of perhaps twenty (20) people who made up its membership has not functioned at all in more that five (5) years.

6. The Sovereign Cowlitz was made up of enrolled members of the Cowlitz Tribe, and they are included within the group which supports H. R. 3612 and would receive per capita payments under its plan.

7. I know of no member of the Sovereign Cowlitz group who opposes H.R. 3612. They have "buried the hatchet" with the Cowlitz Tribe and are now united as one.

DATED THIS 22 day of October, 1982

Donald Cloquet

SUBSCRIBED AND SWORN TO before me this 22nd day of October, 1982.

Notary Public

My commission expires: 5-12-83

Cowlitz

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, HOUSE OF REPRESENTATIVES, ON H.R. 3612, A BILL "TO PROVIDE FOR THE DISPOSITION OF FUNDS APPROPRIATED TO PAY A JUDGMENT IN FAVOR OF THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 218, AND FOR OTHER PURPOSES."

SEPTEMBER 28, 1982

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON H.R. 3612, A BILL TO PROVIDE FOR THE DISPOSITION OF THE COWLITZ JUDGMENT FUNDS.

WE RECOMMEND ENACTMENT OF H.R. 3612, IF AMENDED AS WE SUGGEST.

H.R. 3612 WOULD PROVIDE FOR THE DISTRIBUTION OF FUNDS APPROPRIATED TO PAY A JUDGMENT TO THE COWLITZ TRIBE OF INDIANS IN INDIAN CLAIMS COMMISSION DOCKET NUMERED 218. THE BILL WOULD AUTHORIZE THE SECRETARY OF THE INTERIOR TO SET ASIDE 20 PERCENT OF THE JUDGMENT AWARD FOR PURPOSES AUTHORIZED BY THE COWLITZ TRIBAL COUNCIL AND FOR THE PURCHASE OF LAND FOR THE TRIBE AND TO DISTRIBUTE THE BALANCE OF THE AWARD PER CAPITA TO THOSE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION. THE SECRETARY WOULD BE REQUIRED TO PREPARE A ROLL OF ALL SUCH PERSONS.

ON APRIL 12, 1973, THE INDIAN CLAIMS COMMISSION ACCEPTED A COMPROMISE PROPOSAL IN DOCKET 218, AND AWARDED THE COWLITZ INDIANS $1,550,000 AS COMPENSATION FOR LANDS TAKEN BY THE UNITED STATES ON MARCH 20, 1863, WITHOUT BENEFIT OF TREATY OR COMPENSATION. FUNDS TO COVER THIS AWARD WERE APPROPRIATED BY THE ACT OF JULY 1, 1973.

PRESENTLY, THERE IS NO FEDERALLY-RECOGNIZED SUCCESSOR TO THE ABORIGINAL COWLITZ TRIBE AGGRIEVED IN 1863. A GROUP WHICH IDENTIFIES ITSELF AS "THE TRIBE OF COWLITZ INDIANS OF THE STATE OF WASHINGTON" WAS RECOGNIZED FOR THE PURPOSE OF PROSECUTING THE COWLITZ CLAIM AGAINST THE UNITED STATES. THIS ORGANIZATION, HOWEVER, HAS NOT BEEN RECOGNIZED BY THE FEDERAL GOVERNMENT AS A TRIBAL PARTY.

A SECOND GROUP OF COWLITZ DESCENDANTS SELF-IDENTIFIED AS THE "SOVEREIGN COWLITZ" REPRESENTS A SMALL PERCENTAGE OF THE COWLITZ DESCENDANTS. THIS GROUP ASSERTS THAT SINCE THE COWLITZ NEVER SIGNED AN AGREEMENT WITH THE UNITED STATES, IT IS STILL A SOVEREIGN, INDEPENDENT POLITICAL ENTITY AND, THEREFORE, IS NOT SUBJECT TO THE LAWS OR JURISDICTION OF THE UNITED STATES.

A THIRD GROUP DERIVES IT COWLITZ ANCESTRY FROM THE COWLITZ WHO, IN THE EARLY PART OF THIS CENTURY, MOVED FROM THEIR ABORIGINAL HOMELAND TO THE YAKIMA RESERVATION TO TAKE ADVANTAGE OF BETTER EMPLOYMENT OPPORTUNITIES. THIS GROUP REPRESENTS BETWEEN 55 AND 60 PERCENT OF THE LINEAL DESCENDANTS OF THE ABORIGINAL COWLITZ OF 1863. THE MAJORITY OF THESE INDIVIDUALS ARE PRESENTLY ENROLLED MEMBERS OF THE YAKIMA TRIBE OF THE YAKIMA RESERVATION, WASHINGTON. A FOURTH GROUP, ARE THOSE COWLITZ DESCENDANTS UNAFFILIATED WITH ANY OF THE ABOVE.

PURSUANT TO THE INDIAN JUDGMENT FUNDS ACT OF OCTOBER 19, 1973, A HEARING OF RECORD WAS HELD ON JUNE 1, 1974, AT COWLITZ PRAIRIE, WASHINGTON. THE SUBJECT OF THE HEARING WAS A PROPOSAL SUBMITTED BY "THE TRIBE OF COWLITZ INDIANS" FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS. THIS PLAN WAS SIMILAR,

EXCEPT FOR THE INCLUSION OF THE YAKIMA DESCENDANTS, TO H.R. 3612. THE TRANSCRIPT OF THE HEARING INDICATES THAT ABOUT HALF OF THE 168 PERSONS PRESENT FAVORED THE PLAN. THE MAJORITY OF THOSE FAVORING THIS PROPOSAL WERE DESCENDANTS OF THE COWLITZ WHO CONTINUED TO LIVE IN THE ABORIGINAL AREA.

CONSIDERABLE OPPOSITION TO THE PLAN WAS VOICED AT THE HEARING FROM THOSE COWLITZ DESCENDANTS AFFILIATED WITH THE YAKIMA TRIBES. THEY SUBMITTED A RESOLUTION, SUPPORTED BY A PETITION WITH 194 SIGNATURES, CALLING FOR A FULL PER CAPITA DISTRIBUTION. AN ADDITIONAL 116 INDIVIDUAL LETTERS WERE ALSO SENT TO THE BUREAU OF INDIAN AFFAIRS REQUESTING THAT THE JUDGMENT FUNDS BE DISTRIBUTED ON A PER CAPITA BASIS TO ALL THOSE WHO CAN PROVE LINEAL DESCENDANCY FROM THE COWLITZ INDIANS OF 1863.

ON NOVEMBER 4, 1974, THE SECRETARY SUBMITTED A PLAN FOR THE DISTRIBUTION OF THE JUDGMENT FUNDS TO THE 94TH CONGRESS. THE SECRETARY'S PLAN PROVIDED FOR A PER CAPITA DISTRIBUTION OF THE AWARD TO THE LINEAL DESCENDANTS OF THE COWLITZ TRIBE AS IT EXISTED IN 1863. DUE TO THE CONTROVERSY GENERATED OVER THE PLAN AND THE LIMITED TIME TO CONSIDER THE PROPOSAL BEFORE THE STATUTORY 60-DAY PERIOD EXPIRED, THE DEPARTMENT WITHDREW THE PLAN FROM CONGRESSIONAL CONSIDERATION AT THE REQUEST OF THE CHAIRMEN OF BOTH THE SENATE AND HOUSE COMMITTEES ON INTERIOR AND INSULAR AFFAIRS. NO ACTION WAS TAKEN ON SIMILAR BILLS INTRODUCED IN SUBSEQUENT CONGRESSES.

A MAJOR IMPEDIMENT TO THE DISTRIBUTION OF THE COWLITZ JUDGMENT FUNDS IS IDENTIFYING THE ENTITY WITH WHOM THE FEDERAL GOVERNMENT CAN LEGALLY FULFILL ITS TRUST RESPONSIBILITY FOR THESE FUNDS. PRESENTLY, THERE IS NO FEDERALLY -

ACKNOWLEDGED ORGANIZATION OF COWLITZ DESCENDANTS. ON SEPTEMBER 17, 1975, THE "COWLITZ INDIAN TRIBE" SUBMITTED A PETITION TO THE DEPARTMENT FOR SUCH ACKNOWLEDGEMENT. SUBSEQUENTLY, FINAL REGULATIONS FOR DETERMINING ELIGIBILITY FOR FEDERAL ACKNOWLEDGEMENT WERE PUBLISHED. THE PETITION WAS RETURNED TO THE TRIBE ON JANUARY 9, 1979, FOR REVISIONS IN ACCORDANCE WITH THE PROCEDURE OUTLINED IN THE REGULATIONS. TO DATE, THE PETITION HAS NOT BEEN RESUBMITTED ALTHOUGH WE UNDERSTAND IT IS BEING WORKED ON.

WE HAVE ATTACHED TO THE STATEMENT PROPOSED AMENDMENTS WITH EXPLANATIONS FOR EACH TO H.R. 3612 WHICH WOULD DELETE REFERENCE TO THE "COWLITZ INDIAN TRIBE" SINCE THE STATUS OF THIS TRIBAL ENTITY IS IN QUESTION; DELETE THE PROVISION FOR SETTING ASIDE 20 PERCENT OF THE AWARD FOR TRIBAL PROGRAMMING; DELETE THE 1/16 COWLITZ BLOOD DEGREE LIMITATION FOR ELIGIBILITY TO PARTICIPATE IN THE AWARD; AND DELETE THOSE PROVISIONS WHICH WOULD CREATE AN INEQUITY RELATING TO THE ELIGIBILITY OF ENROLLED MEMBERS OF THE YAKIMA TRIBE. OTHER AMENDMENTS PROPOSED ARE FOR CLARIFICATION AND ARE TECHNICAL IN NATURE.

IN SUM, OUR PROPOSED AMENDMENTS WOULD PROVIDE THAT THE JUDGMENT FUNDS IN DOCKET 218 BE DISTRIBUTED PER CAPITA ON A DESCENDANCY BASIS.

IF AMENDED AS WE SUGGEST, WE WOULD NOT OBJECT TO THE ENACTMENT OF H.R. 3612.

THIS CONCLUDES MY PREPARED STATEMENT AND I SHALL BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

AMENDMENTS

1. Section 2 of H.R. 3612 would require the Secretary to prepare a roll of all persons eligible to participate in the distribution of judgment funds. Subsection 2(a)(2) would restrict eligibility to those persons with 1/16 degree or more Cowlitz blood. The scarcity of acceptable records on the Cowlitz Indians will make it difficult for many applicants to prove lineal descendancy from the aboriginal group. The only official government-sponsored roll is the "Schedule of Unenrolled Indians" compiled by Special Indian agent Charles Robbin, dated January 1, 1919, some 56 years after the taking date of 1863. The additional requirement to prove a 1/16 blood quantum would further complicate the roll preparation and delay the payment.

   Accordingly, we recommend that the blood degree limitation be deleted and the roll be prepared on a descendancy basis. On page 2, lines 5 and 6 of subsection 2(a)(2), delete the phrase ", of one-sixteenth degree or more of Cowlitz blood,".

2. Section 2(a)(3) would vest the "Cowlitz Indian Tribe" with veto authority concerning the eligibility for inclusion on the Secretary's payment roll. Since the status of the tribal entity is in question, we recommend that the phrase "the Cowlitz Indian Tribe and" be deleted on page 2, line 11 of section 2(a)(3).

3. Section 2(b) would prohibit any person who has shared in or is eligible to share in a judgment award or who is an enrolled member of another tribe from sharing in this award. Section 2(c), however, would exempt enrolled members of the Yakima Tribe (who have continued their interest and support of the Cowlitz Tribe) from this prohibition.

   These two sections would, in effect, eliminate all Cowlitz descendants, regardless of blood quantum with the exception of those members of the Yakima Tribe who have supported the "Cowlitz Tribe". This would create an inequitable situation. Therefore, we recommend that sections 2(b) and 2(c) be deleted. Section 2(a), as amended above, would not preclude any eligible enrolled member of the Yakima Tribe from participating in the distribution. As indicated in our statement, these members of the Yakima Tribe are lineal descendants of those Cowlitz who moved from their aboriginal homeland to the Yakima Reservation to seek better employment opportunities. It is not unusual for persons who are enrolled members of one tribe to share in a per capita distribution as descendants of a different aboriginal entity. The distribution of awards to the Kiowa, Comanche and Apache Tribes under the Act of September 21, 1959 and the Act of September 28, 1968, permitted payment of per capita shares to persons who were eligible as descendants of one entity but were enrolled members of different tribes. A similar situation occurred with the Mississippi Sioux Tribes under the Act of October 25, 1972, and the Otoe-Missouria under the Act of October 14, 1966.

4. Section 2(d) would give the "Cowlitz Tribal Council" the responsibility, in consultation with the Secretary, of determining the rolls to be the basis for eligibility on the payment roll. Section 2(d) is similar to section 2(a)(3) in that it would vest the "Cowlitz Tribal Council" with final authority to determine the eligibility for enrollment of an application and the records to be used as the bases of this determination. Again, since the tribal status of this group remains in question, we recommend deletion of section 2(d). This would not, however, preclude representatives of the Cowlitz Indians from expressing their views. The Department's enrollment regulations provide for the review of applications by tribal authorities.

5. Section 3(a) of the bill would provide for 20 percent of the award to be set aside for expenditures authorized by the "Cowlitz Tribal Council" and for the purchase of land. The "Council" would be authorized to purchase land in fee patent. In the event that this group achieves Federal acknowledgment, the land would become the Cowlitz Reservation to be taken into trust by the Department. However, since the "Cowlitz Indian Tribe" does not have a government-to-government relationship with the United States at this time, we recommend that section 3(a) be deleted, thereby providing that all of the judgment funds be distributed per capita. Section 3 would also be amended by deleting the words "as follows:" on page 3, line 7, and the phrase "(b) The balance shall be distributed" on the same page, line 19 for technical consistency.

6. We recommend that a new section be added at the end of the bill to read as follows:

> "Sec. 5. The Secretary is authorized to prescribe rules and regulations to carry out the provisions of this Act."

WHITTLESEY & O'BRIEN, P.C.
ATTORNEYS AT LAW
1007 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D. C. 20009
(202) 463-1500

DENNIS J. WHITTLESEY
LAWRENCE J. O'BRIEN, JR.
SUSAN E. O'KEEFE

PETER J. KIERNAN
OF COUNSEL

December 7, 1982

MEMORANDUM CONCERNING RIGHT OF A NON-FEDERALLY RECOGNIZED INDIAN TRIBE TO RECEIVE TRIBAL SHARE OF A JUDGMENT FUND, AS PROPOSED BY S. 2931

The purpose of this memorandum is to discuss the opposition of the Department of the Interior to S. 2931 on an issue which, in 1973, Congress has resolved in favor of the Cowlitz Indian Tribe with the enactment of legislation specifically dealing with the distribution of Indian tribes' judgment funds.

S. 2931 proposes to distribute money which was appropriated to the Cowlitz Tribe and its members more than nine years ago. The original appropriation was approximately $1.5 million, and was compensation for the taking by the federal government more than 100 years ago of the tribe's aboriginal lands. These lands today constitue several counties in the State of Washington.

The distribution proposed by this legislation follows existing federal law. See, Distribution of [Indian] Judgment Funds Act of October 19, 1973, Public Law 93-134,

which is codified at 25 U.S.C. §§1401-1407. Although this law already clearly outlines the formula for distribution, Interior refuses to permit the Cowlitz Tribe to enjoy its benefits.

Specifically at issue is whether the Cowlitz Tribe should receive a "tribal share" of its judgment fund, or whether 100 percent of the fund must be distributed to the individual tribal members on a per capita basis. The Department of the Interior asserts that the Cowlitz Tribe cannot take a tribal share for the reason that it is not formally federally recognized. In such a case, Interior insists, all of the judgment fund must be paid out on a per capita basis to individual tribal members.

There is no provision in Public Law 93-134 that a tribal share may be paid only to recognized tribes, and that unrecognized tribes can take no portion of a judgment fund. In fact, the law clearly contemplates that non-recognized Indian groups will take the "tribal share," since the law declares that Indian groups entitled to receive such a share shall include "any Indian tribe, band, group, pueblo, or community."

This law firm has looked at this issue and has found nothing in the legislative history of the 1973 Judgement Fund Distribution Act which would indicate that Congress

intended the limitation now being read into the law by Interior. Moreover, conversations with Congressional staff personnel involved in drafting and enacting the 1973 law confirm that there was no intention to establish the limitation now urged by Interior.

A unanimous Cowlitz Tribe asks Congress to set aside a tribal share of 20 percent of the tribal judgment fund, yet Interior continues to say that such is not permitted. The objection is difficult to understand since the tribe neither asks for recognition nor that the money be held as "trust" funds.

Congress decided in 1973 that the judgment funds should be distributed in a manner which would permit Indian tribes such as the Cowlitz to take a minimum of 20 percent of the total. This legislation would set aside for the tribe the statutory minimum which Congress already has defined. The Cowlitz Tribe urges Congress to act favorably on S. 2931, since there is no legal justification for Interior's position opposing its provisions.

Respectfully submitted,

WHITTLESEY & O'BRIEN, P.C.

By _____
Dennis J. Whittlesey

DJW:ps

SMALL TRIBES ORGANIZATION of WESTERN WASHINGTON

P. O. Box 578/Sumner, Washington 98390/(206) 593-2894

R E S O L U T I O N November 16, 1977

WHEREAS, The Cowlitz Tribe is a charter member of the Small Tribes Organization of Western Washington and have been confronted with insurmountable obstacles facing the landless tribes since the coming of the white man; and

WHEREAS, Congress did appropriate $1,550,000.00 for the Tribe in 1973, as compensation for land taken without benefit of treaty or compensation, and the Bureau of Indian Affairs requested that the Tribe submit a plan for distribution of said funds; and

WHEREAS, The Cowlitz Tribe submitted their plan in accordance with P.L. 93-134 (an Act for the use of distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the Court of Claims) and the Secretary of the Interior submitted a counter plan directly in opposition to that submitted by the Tribe; and

WHEREAS, Landless tribes have not been able to receive Indian Claims Commission Judgment Awards other than per capita distribution, and requests for disbursement of a portion of judgment funds to purchase land to be held in trust have generally been denied, in spite of P.L. 93-134 that was passed into Law October 19, 1973; and

WHEREAS, It became necessary for the Cowlitz Tribe to prepare their own plan for the distribution of funds appropriated; and

WHEREAS, The plan for distribution of Cowlitz Judgment Funds was introduced to the 95th Congress by Congressmen Don Bonker and Norm Dicks as HR 5523; therefore

BE IT RESOLVED, By the Board of Directors of the Small Tribes Organization of Western Washington, to petition Congress to act favorably on behalf of HR 5523; and

BE IT FURTHER RESOLVED, That the request of the Cowlitz Tribe that P.L. 93-134 be enforced and that 20% of the funds appropriated be set aside for the purchase of lands to be held in trust for the Cowlitz Tribe.

C E R T I F I C A T I O N

The foregoing resolution was duly enacted at the regular meeting of the STOWW Board of Directors this 16th day of November by a vote of for and against.

SIGNED: KATHLEEN BISHOP, CHAIRMAN ATTEST: CECILE MAXWELL, SECRETARY

original signed by Stowww Chairman & Secretary

RESOLUTION #56-82

WHEREAS, The Cowlitz Indian Tribe was granted a $1,550,000.00 settlement by the Indian Claims Commision for the disposition of funds appropriated to pay a judgement for lands taken without compensation; and

WHEREAS, The Cowlitz Tribe differed with the Secretary of the Interiór as to how these funds should be distributed; and

WHEREAS, The Cowlitz Tribe insists upon its right to the 20% Tribal share under the Indian Judgement Funds Distribution Act and that the distribution of funds be limited to those of 1/16th or more of Cowlitz Blood who do not belong to any other tribe (with certain exclusions) and

WHEREAS, The Cowlitz Tribe has had legislation introduced every year for distribution of said funds in four bills, and

WHEREAS, Congressional action is a very slow process in these trying times and efforts must be pursued to move this matter forward expeditiously; therefore

BE IT RESOLVED, That the Cowlitz Indian Tribe authorize their representatives and attorneys to negotiate the matter of release of the accrued interest of the 20% tribal share of the judgement fund for the good and welfare of the Tribe, and find a mutually agreeable formula for funds distributed.

CERTIFICATION

The following resolution was adopted at the regular meeting of the Cowlitz Indian Tribe on June 5, 1982, held at the Cowlitz Prairie Grange Hall in Toledo, Washington at which a quorum was present and passed by a vote of 49 for and 0 against.

SIGNED: _____
Chairman,
COWLITZ INDIAN TRIBE

ATTEST: _____
Secretary,
COWLITZ INDIAN TRIBE

SMALL TRIBES ORGANIZATION of WESTERN WASHINGTON

P. O. Box 578/Sumner, Washington 98390/(206) 593-2894

August 10, 1982

John Barnett
610 Hill Road
Aberdeen, W[illegible] 98520

Dear Mr. Barnett:

The Small Tribes Organization of Western Washington expresses its full support for House Resolution 3612, the Cowlitz Indian Tribe Claims Settlement Bill. The Cowlitz Indian Tribe is a charter member of our organization and in our fifteen years of socio-economic and health programs, Cowlitz Tribal members have ably served as staff members, Board Chairpersons, and as volunteers on our committees. Your tribe has maintained its governmental functions over the years through active, capable leadership.

These leaders, together with the Cowlitz membership, have developed a plan to manage the settlement provided under HR 3612. STOWW is participating in that plan by providing technical assistance. We are proud that Cowlitz is a member of STOWW and will share in your happiness when this claims settlement is finalized.

Sincerely,

F. Douglas Pennoyer

F. Douglas Pennoyer
Executive Director

STATE OF
WASHINGTON
Dan, Lee Ray
Governor

GOVERNOR'S INDIAN ADVISORY COUNCIL
120 East Union Avenue, Room 102, Olympia, Washington 98504 206/753-2411

February 20, 1979

TO WHOM IT MAY CONCERN:

This is to attest that the Cowlitz Tribe of Indians has been a member of the Governor's Indian Advisory Council since the Council was created by Executive Order in 1972.

Mr. William Jeffries, former Governor's Special Assistant for Indian Affairs, has informed me that the Cowlitz Tribe was recognized by the State of Washington even before that time as the tribe was a member of the Governor's Indian Advisory Committee which Mr. Jeffries believes was formed in about 1966.

Sincerely

Blanchard Matte
Governor's Special Assistant
for Indian Affairs, Interim

BM:jl

Affiliated Tribes of Northwest Indians

Annual Meeting

of the

AFFILIATED TRIBES OF NORTHWEST INDIANS

PRESIDENT
REV. WALTER L. MOFFETT
NEZ PERCE

EXECUTIVE DIRECTOR
SKIP SKAGEN
COEUR D' ALENE

RESOLUTION NO. 15

WHEREAS, the Coulitz Tribe of Indians is a modern day successor to the aboriginal Coulitz Tribe of Indians, and

WHEREAS, the Coulitz Tribe of Indians is a member of the N.C.A.I., Northwest Affiliated Tribes, and CTONI, and

WHEREAS, the Coulitz Tribe of Indians has a constitution and bylaws and permanent tribal employees to administer the affairs of the tribe, and

WHEREAS, the Coulitz Tribe of Indians has petitioned the Secretary of the Interior for federal services as a recognized Indian tribe, and

WHEREAS, the Coulitz Tribe of Indians has constantly supported all causes advocated by the Affiliated Tribes of Northwest Indians;

NOW, THEREFORE BE IT RESOLVED, that the Affiliated Tribes of Northwest Indians supports the efforts of the Coulitz Tribe of Indians to become eligible for federal services as a recognized Indian tribe and to attain self-determination as a recognized Indian tribe.

The foregoing Resolution has been adopted by the Executive Council of the Affiliated Tribes of Northwest Indians at its annual meeting, October 22-24, 1975, at the Davenport Hotel, Spokane, Washington.

Executive Director — President

1ST VICE PRESIDENT
ROGER JIM
YAKIMA

SECRETARY
ALLEN SLICKPOO, SR.
NEZ PERCE

2ND VICE PRESIDENT
KENNETH EDMO
SHOSHONE-BANNOCK

ASSISTANT SECRETARY
LORRAINE HUSMAN
BURNS-PAIUTE

3RD VICE PRESIDENT
EUGENE PARKER
[illegible]

TREASURER
ROLAND KENNEDY
[illegible]

RESOLUTION No. NCAI 75-67

WHEREAS, the Cowlitz Tribe of Indians is the modern day successor to the aboriginal Cowlitz Tribe of Indians;

WHEREAS, the Cowlitz Tribe of Indians has constitution and bylaws and permanent tribal employees to administer the affairs of the tribe;

WHEREAS, the Cowlitz Tribe of Indians has petitioned the Secretary of the Interior for federal services as a recognized Indian tribe;

WHEREAS, the Cowlitz Tribe of Indians has constantly supported all causes advocated by the Affiliated Tribes of Northwest Indians and National Congress of American Indians;

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians supports the efforts of the Cowlitz Tribe of Indians to become eligible for federal services as a recognized Indian tribe and to attain self-determination as a recognized Indian tribe.

PASSED UNANIMOUSLY BY THE GENERAL MEMBERSHIP OF THE NATIONAL CONGRESS OF AMERICAN INDIANS, NOVEMBER 1975

Senator GORTON. Do either Dr. Ray or Dr. Beckham have anything additional to say on the inclusion of their statements in the record?

Dr. Beckham?

STATEMENT OF DR. STEPHEN DOW BECKHAM, PROFESSOR OF HISTORY, LEWIS & CLARK COLLEGE, PORTLAND, OREG.

Dr. BECKHAM. Yes, Senator, I do.

My name is Stephen Beckham. I am a professor of history at Lewis & Clark College in Portland, Oreg. I reside at 1389 Southwest Hood View Lane, Lake Oswego, Oreg.

I will give you a quick summary of my statement.

My experience from working with the Cowlitz material dates back nearly 20 years. It began with a very intensive scrutiny of their present family histories in 1979 when I served as an expert witness in fishing rights litigation in Federal court in Portland and in Tacoma.

It is my conclusion that, on the basis of use of the Catholic Church archives, which commenced in the Pacific Northwest in 1839, as well as the documentary material acquired by agent Charles Roblin between 1916 and 1919, the Federal Decennial Census Schedules for Washington Territory and the State of Washington and extraneous materials such as the congressionally appointed commission to settle the claims of the Hudson's Bay Co., unequivocal documentary evidence exists that confirms that these people are what they say that they are and that the ancestry of present tribal members is documented rigorously in the historic period.

The observations of Bureau of Indian Affairs personnel about the existence of this tribe are extensive. That material is referred to in the written testimony that is submitted to you today.

I would just say in conclusion that I teach a course called the History and Culture of the American Indian. Each year, for the past 5 years, I have used the situation of the Cowlitz as an example of some of the frustrations the tribes feel in dealing with the Bureau of Indian Affairs. It is rather interesting that, in this particular case, I have a moment to speak to the Senate committee regarding this; it strikes me that the Bureau should be helping this tribe get its funds distributed which were awarded by the court and appropriated years ago by Congress.

Yet, here we go through repeated opposition of the Bureau in this process.

We hope that, maybe this time, things will be turned around.

Thank you.

Senator GORTON. You said in your testimony that you began to familiarize yourself with the situation of the Cowlitz in connection with some of the legislation relating to fishing rights?

Dr. BECKHAM. Litigation. Particularly in the case of the *Wahkiakum* v. *Oregon and Washington*, and the Cowlitz and the Chinook——

Senator GORTON. As I remember, you did not establish what you set out to establish.

Did that decision have anything to do with rejecting the point of view you have here or was that a completely separate idea?

Dr. BECKHAM. The merits of the Cowlitz fishing rights case never got to be examined in court but, in the process of my work, I had to identify

the genealogies of 14 Cowlitz plaintiffs. In the process, I had to examine the historical records. I found conclusively that——

Senator GORTON. My question is: Did the court accept the validity of the work that you did in establishing that ancestry?

Dr. BECKHAM. Yes?

Senator GORTON. Or, did it not ever even get to that point?

Dr. BECKHAM. It did not get to that point.

Senator GORTON. All right. That was all I wanted to ask you.

Without objection, your prepared statement will be entered in the record at this point.

[The statement follows:]

PREPARED TESTIMONY OF STEPHEN DOW BECKHAM, PH. D., PROFESSOR OF HISTORY, LEWIS & CLARK COLLEGE, PORTLAND, OREG.

I am Stephen Dow Beckham, ethnohistory consultant for the Cowlitz Indian Tribe. I live at 1389 S.W. Hood View Lane, Lake Oswego, Oregon.

My research into the history and culture of the Cowlitz Indian Tribe commenced in 1964 when I began writing a biography of George Gibbs, a 19th Century ethnologist and explorer who drafted the treaties which were negotiated with many of the Indian tribes of western Washington Territory. This work focused much more closely on the Cowlitz Tribe when in 1979 I became the expert witness for the Cowlitz in their fishing rights litigation with the states of Oregon and Washington. In this capacity I carried out extensive research on the genealogies of fourteen named Cowlitz plaintiffs and reviewed a voluminous literature, both ethnographic and historic, relating to this tribe.

I am in my fifteenth year as a college teacher and am a specialist in the field of the history of the Pacific Northwest and American Indian history and culture. I have authored a volume in the Civilization of the American Indian Series of the University of Oklahoma Press, as well as three book-length monographs in the University of Oregon's anthropological series. I am also the author of the ethnohistory volume *This Land Was Theirs: The Indians of Western Oregon* (1977).

The detailed genealogical information on the Cowlitz Tribe is recorded in a variety of places. Dr. Verne F. Ray, who is present today, made extensive field notes with Cowlitz informants when he began his research on the Cowlitz land claims case more than thirty years ago. His materials document family histories.

As an historian, I have made particular use of the records of the Catholic Church in the Pacific Northwest. The Catholic missionaries began baptizing Cowlitz Indians in 1839 and chronicled in detail the family births, baptisms, marriages and deaths of tribal members. In the 1840's, the Catholics established a mission at Cowlitz Landing. This station survives today as a parish church and has produced decades of documentation confirming that the present Cowlitz tribe is descended from the aboriginal Cowlitz Indians.

I can also confirm that members of the Cowlitz Tribe today are descended from Indian families enumerated in the federal decennial census rolls for Washington Territory and Washington State. I have used these government population schedules in documenting Cowlitz genealogies. More important, in my opinion, are the records of the Bureau of Indian Affairs which identify the Cowlitz as a tribe and document in detail—complete with affidavits from tribal members in the years 1916–19—the genealogies of the ancestors of the present tribe.

I refer specifically to the enrollment of the Cowlitz which was carried out from 1916 to 1919 by Charles Roblin, Special Indian Agent. Roblin's report, which is in the National Archives in Washington, D.C., and in the Branch Depository in Seattle, Washington, refers to the Cowlitz as a tribe. In his summary narrative of 1919 Roblin stated that the "Cowlitz tribe seems to have better foundation for a claim [for compensation for its aboriginal lands] than the other tribes of western Washington," Roblin added:

"The Cowlitz tribe was a powerful tribe, and in the early days this tribe constituted the 'blue blood' of western Washington. They were independent, fearless and aggressive; and they refused to subordinate themselves to the white man by entering into a treaty with him. Their descendants have the same qualities which placed their ancestors in the position of leaders."

The Cowlitz Tribe uses the Roblin Roll for its definition of membership today. All of the Cowlitz on the present tribal roll can trace their ancestry to the enumeration of the Cowlitz Tribe made by Agent Roblin.

The Bureau of Indian Affairs has made many subsequent identifications of the present tribal members or their parents and grandparents as Cowlitz. Such has been the case in the allotment of lands to Cowlitz Indians as "Cowlitz" on the Quinault Reservation. This has also been the case when members of this tribe were registered to vote as Cowlitz Indians in 1935 under the terms of the Indian Reorganization Act.

The Cowlitz Tribe has an extensive and well documented record in the ethnographic and historic literature of the Pacific Northwest. I have attended tribal meetings, worked with the tribal council and examined in detail the records of descent of present-day Cowlitz from aboriginal ancestors. I confirm as an ethnohistorian the weight of evidence which is available on this tribe.

Senator GORTON. Dr. Ray, do you have anything to add?

STATEMENT OF DR. VERNE F. RAY, CONSULTING ANTHROPOLOGIST TO THE COWLITZ INDIAN TRIBE

Dr. RAY. Thank you.

My name is Verne Frederick Ray. My home and my office are located in Port Townsend, Wash., which I note with interest is the home State both for myself and for the sponsors of this proposed legislation.

In connection with the present issues I have examined the materials that I have gathered over a long period of time in working with the Indians of the Pacific Northwest.

In 1928, 54 years ago, I started research work in the field and archival and bibliographical work with the Indians of the Pacific Northwest.

In the early 1930's, I published the monograph—the only existing monograph—on the Chinook Indians as a result of my research there; and I also did field research, less exhaustively, with the Cowlitz Tribe, immediately to the west.

My research took place during the 1930's.

In 1966 and 1967, I gave intensive attention to the Cowlitz Indians, their history, their ethnology, but particularly to the question of tribal organization and chieftainship.

My prime interests in the field of ethnology have always been political structure and religion. It is on the basis of the comparative evaluation of the organization of the Cowlitz Indians which, as I indicated, I studied intensively both with informants in the field and in the written source; it is on the basis then, as I say, of comparison with the whole of the Northwest; starting in 1951, I testified for various American Indian tribes, mostly in the Pacific Northwest, before the Indian Claims Commission.

The total number of cases in which I appeared was 2 dozen or more. The total numbers of tribes for whom I presented the data which were wanted by the Indian Claims Commission was over 30.

So, I am not looking at the Cowlitz in isolation. I am leading up to the point that I want to make on the basis, not only of the field research and the academic background and my writings. My teaching has been in the University of Washington and at Yale University. In the latter institution, I was professor of anthropology and director of the human relations area files which were concerned with worldwide research, cooperatively by 15 American universities.

All of these data enter into my thinking when I come to a conclusion with regard to the Cowlitz.

Now, it is my understanding that one of the critical issues here is tribe. I have studied the existence of the tribe with all of these peoples

that I have mentioned. I have studied it as a special subject. I studied it in terms of leadership and chieftainship. I can say unequivocally, as I did in 1966 in print, and that is in my written statement, I can say unequivocally that the Cowlitz were organized aboriginally as a tribe in the sense of the common English usage of that word, in the sense of the Indian understanding of that word, in the sense of governmental use of that word.

I worked for the Bureau of Indian Affairs for a while, and that was the governmental use of that word.

There has been consistent and uninterrupted tribal organization and chiefly leadership in terms of tribal unity and organization since aboriginal times right up to the present day.

Senator GORTON. In other words, your testimony—your study is then confirmed by that of Dr. Beckham, is that right?

Dr. RAY. Yes, if I understood your question, Senator.

Senator GORTON. The testimony brought by you and by Dr. Beckham confirmed each other.

You did work studying at an earlier time than he did. Nothing that he has found is inconsistent with anything that you have said.

Dr. RAY. That is right.

[The prepared statement follows:]

PREPARED STATEMENT OF VERNE F. RAY, PH. D., CONSULTING ANTHROPOLOGIST TO THE COWLITZ INDIAN TRIBE

I am Verne F. Ray, Consulting Anthropologist to the Cowlitz Indian Tribe. I live at 438 Pierce Street, Port Townsend, Washington.

My purpose today is to address certain questions about S. 2931 which have been raised by the United States Department of the Interior in opposition to the bill as drafted. This legislation, sponsored by my home state Senators Slade Gorton and Henry Jackson, proposes a distribution of the tribal judgment fund appropriated subsequent to the settlement of Indian Claims Commission Docket No. 218.

In preparing this testimony, I have reviewed the testimony presented to the House Committee on Interior and Insular Affairs on September 28, 1982, by Deputy Assistant Secretary John Fritz, as well as historical resources and my own research.

As this Committee knows, the Indian Claims Commission functioned for many years as the court in which Indian land claims were litigated. I appeared before that body as an expert witness for approximately 30 Indian tribes in more than 24 separate cases. My background includes a Ph.D. in anthropology from Yale, and Masters and Bachelor degrees in anthropology from the University of Washington. I am the author of several books and scores of published articles, all dealing with my studies of the Indian people. I have served as a member of the faculty of anthropology at the University of Washington and Associate Dean of the Graduate School at that same institution. While at Yale, I was a Professor of Anthropology and Research Director of the Human Relations Area Files, a worldwide research project of 15 American universities.

In 1938, I published an ethnographic monograph on the Chinook Indians. In 1966, my "Handbook of Cowlitz Indians" was printed. My full bibliograph includes several books, mostly anthropological and mostly dealing with American Indians. In addition, my publications include numerous books edited, several dozen articles and reports and innumerable professional book reviews.

My statements with regard to the Cowlitz Tribe of Indians are based upon original field research, archival research and bibliographic investigations during the 1930's and the 1960's. My field research with the Indians of the Pacific Northwest began in 1928 and has been continued to the present time, with brief interruptions for field work with other American Indians and peoples of the Middle East. For the past 54 years, a great percentage of my time has been spent in study and research of the Indians of the Columbia River Basin, including the Cowlitz.

From 1931 to 1937, I conducted ethnological studies of the Indians of Southwestern Washington generally, with primary emphasis on the Chinook Indians living along the Columbia. At that same time, I also studied the Cowlitz living just to the east of the Chinook. From 1965 through 1966, I studied the Cowlitz tribe specifically and intensively.

My archival and bibliographical research on the Cowlitz Indians covered all available sources and repositories, especially the National Archives, archives of the Oregon Historical Society, Bancroft Library of the University of California, Library of Congress, and the library of the Department of the Interior. In addition, I have utilized many smaller collections in archives and libraries.

Based upon all these anthropological studies and analyses, I have formed a conclusion and firmly held professional opinion with respect to the issue of Cowlitz tribal government from the aboriginal epoch into modern society. That opinion is succinctly expressed in my *Handbook of Cowlitz Indians* at page A–13:

"11. The Cowlitz tribe was more firmly cohesively organized than other western Washington tribes. This fact is an anthropological certainty in view of the cultural separatism, even isolation, of the Cowlitz as reflected in the present analysis. However, the finding does not rest upon a theoretical interpretation but, rather unequivocal historical and ethnological records. The tightest organization was within the tribal divisions. The most impressive aspect of the social organization, however, was perhaps the overall unity. The ties between the divisions were loose but unyielding, and, for three divisions, of very long standing. This, despite the fact of linguistic differences and occupancy of territories of considerable geographic and ecological contrast."

I stand solidly on this statement today. I have no reason to modify it in any way.

One of the main objects of my research with the Cowlitz was to ascertain the character of their social organization, since political organization and religion have been the two subjects to which I have given major emphasis throughout my professional career. Toward this end I devoted a great deal of time and attention, together with the help of an ethnological assistant, to the development of genealogical charts showing, as exhaustively as possible, the lineages of descendants of Cowlitz Chief Scanewa and Chief Cowlitz and their positions in the tribe throughout recoverable history and at the present time. This genealogical technique, while laborious and time-consuming, has come to be recognized in anthropology as the most scientifically reliable manner in which to ascertain the character and continuity of tribal organization and tribal leadership from early years to the present. The procedure involves the interviewing of great numbers of present-day survivors of the early leaders and notable individuals, and the examination of all pertinent archives, particularly church records.

For the Cowlitz, the recoverable records start with Chief Cowlitz—it was he whose name has come to be the recognized name for the tribe—and Chief Scanewa, two chiefs whose descendants are much intermarried. Their first dates for these two chieftains are not ascertainable, but Scanewa's daughter, Veronica, was born before 1797 and Cowlitz's daughter, Emilie Marie, was born in 1796.

On the genealogies, there are well over 300 individuals represented; the succession of leadership and descendancy can be traced uninterruptedly through seven or eight generations to the present day.

In my archival and bibliographic research, I found the Cowlitz Tribe and/or its chieftains specifically and unequivocally referred to and discussed by such early explorers as Lewis and Clark (1805–06), "Cowlitz Nation"; Robert Stuart (1812), "Cowlitz Nation"; Alexander Ross (1813–21), "Cowlitz . . . principal chiefs"; David Douglas (1823–27), Scanewa "chief"; John Scouler, M.D. (1825), "Cowlitz Chief"; Gov. George Simpson (1830), "Scanewa: Cowlitz Chief"; W. F. Tolmie, M.D. (1833), "Cowlitz . . . chief"; Lt. Charles Wilkes (1838–42), "Cowlitz Landing . . . chief"; Rev. F. N. Blanchet (1838–42), "Cowlitz . . . separate speech"; Paul Kane (1846), "Cowlitz . . . Kiscox, the chief"; Agent E. A. Starling (1852), Cowlitz-Chehalis areas: "tribes . . . chiefs"; treaty interpreter James G. Swan (1852–55): "treaty efforts, Cowlitz and others"; Com. Ind. Aff. (1879), "Lower Cowlitz band is the remnant of a once powerful tribe and talks a different language from all others . . ."; Com. Ind. Aff. (1881), re census: "Cowlitz chiefs and headmen."

Early writers reported many examples of intertribal warfare between the Cowlitz and various neighbors.

During the period 1838–55, there was great interest by the federal government in the Cowlitz Tribe and official relationships with it, but little actual

contact because of the tribe's isolated location. Intensive efforts to achieve a treaty failed in 1855. However, the Cowlitz were under supervision, however erratic, by federal agents in the post-1856 period. Governor Isaac Stevens was as much concerned with the Cowlitz Tribe as with other tribes of the area but he failed to accomplish a treaty with this tribe. Even so, many goods and services were supplied or offered to the Cowlitz Tribe in the post-1856 era by various federal agents and a "reservation" was even established.

During the litigation of Docket No. 218, I served as an expert anthropologist to the Cowlitz, and in this regard, I prepared many exhibits for use at trial and published the *Handbook of Cowlitz Indians* in 1966.

Among the exhibits admitted into evidence which I prepared was a genealogical chart of the Cowlitz members, tracing close to and into the aboriginal epoch all of the lineages that today are recognized as the important components of the tribe. In some cases, I was able to trace family ancestry (lineal and collateral) more than 100 years into the 5th generation, which clearly traces those particular lineages to the aboriginal Cowlitz Tribe.

I have a copy of that chart with me today.

In addition to that chart, I have attached two exhibits to this testimony which were prepared for use in Docket No. 218. *Exhibit A* consists of a summary sheet and chart demonstrating that the federal government has been very interested in the Cowlitz Tribe beginning in 1812 through the continuing compilation of census data. *Exhibit B* shows the continuity of the Cowlitz tribal government into the late 1800's through the existence of identification of tribal chieftains.

Based on my years of working with the Cowlitz tribe and its people, I have formed the following professional opinions:

1. The Cowlitz people are extremely conscious of being Cowlitz and have been so at all times for which I have studied;

2. The Cowlitz people at all times have been extremely conscious of their tribal identification as Cowlitz; and,

3. The genealogical study which I have made clearly demonstrates direct family lines to, or into, the aboriginal Cowlitz Tribe and includes people who were aboriginal chieftains.

Finally, based on my work and training and experience as an anthropologist, I have reached the professional opinion that the Cowlitz Indian Tribe which is now before this Committee is the political continuation of, and successor in interest to, the aboriginal Cowlitz tribe.

In response to Mr. Fritz's previous testimony, which I assume will not differ greatly from what the Department will say here today, I reaffirm my professional conclusion that the Tribe now before this Committee is the successor to the aboriginal tribe. Moreover, I know of no individuals or groups of Cowlitz Indians whose rights and entitlements are not covered by the legislation.

TESTIMONY OF VERNE F. RAY

PARTIAL LIST OF COWLITZ CHIEFS, 1800-1878

prepared by Verne F. Ray

Chief's name	Span	Ex.	Date	Authority
Cowlitz	28 yrs±			
"Cowlitz"		165	1800±	Verne F. Ray
"Towlitz"		157	1828	Frank Ermatinger
Scanewa (killed mid-May 1828)	15 yrs±			
"Scanewa"		165	1810±	Verne F. Ray
"Schachanaway"		15, p.62	1825	David Douglas
"Schannaway"		21, p.86	1830	George Simpson
"Schunawa"		157	1828	Frank Ermatinger
Wahawa	38 yrs			
"How-How"		12,p.129-32	1819	Alexander Ross
"Wahawa"		127, p.64	1830±	Verne F. Ray
"Wahawa"		62, p. 5	1857	A. J. Cain
Wieno	27 yrs±			
"Wieno"		113, pp.14-15	1830±	E. S. Curtis
"Wyeeno"		62, p. 5	1857	A. J. Cain
Kishcock	11 yrs			
"Kiscox"		41, pp.140-41	1846	Paul Cain
"Kishkok, Cowlitz head chief"		56, p.53	1855	I. I. Stevens
"Kishkok"		62, p. 5	1857	A. J. Cain
Owhi				
"Owhye"		56,pp.53-54,60	1855	I. I. Stevens
Kwonsappa				
"Kwonsappa, Cowlitz Sub Chief"		56, p.59	1855	I. I. Stevens
Stockum (2 generations ?)	65 yrs			
"Stockum (Cowlitz ?)"		11, p.855	1813	Alexander Henry
"Atwain" (English name)		81, p. 1	1870	Samuel Ross
"Antoine or Stokum"		153	1878	R. H. Milroy

Ex. No.	Date		Lower Cowlitz		Upper Cowlitz		Lew
			Ex.	Ray	Ex.	Ray	E
9	1812	Robert Stuart	250 men	1750 (persons)			
11	1813-14	Alexander Henry		1250			
14	1820	Jedediah Morse					
16	1824	John Work		1500			
20	1829	George Simpson		2000			
21	1828-30	George Simpson					
26	1834	John Townsend		1000			
28	1836-38	Herbert Beaver					
29	1838-42	Charles Wilkes			350	500	
31	1838-42	Charles Wilkes	330	500			
33	1838-42	F. N. Blanchet					
37	1845-46	Warre & Vavasour	500	500			5
41	1846	Paul Kane		600			
Def. 17	1846	John Cain					
54 Recalled in	1854	Wm. H. Tappan					3
62	1855	John Cain		350		350	
58	1855	Isaac I. Stevens					
Def. 17	1856	John Cain		450			
"	"	" "					
61	1856	Isaac I. Stevens		550			
62	1856	S. S. Ford, Sr.					
64	1857	John Cain					
62	1857	A. J. Cain	100		350	500	
Recalled in 55	1857	Isaac I. Stevens					
67	1860	M. T. Simmons					
68	1861	W. B. Gosnell		450			
78	1867	C. C. Pagett	350	500			
81	1870	Samuel Ross					
60	As of 1810-20	George Gibbs					
"	" "	" "					
113	" "	Edward S. Curtis	4,000+	2,000			
"	As of ca. 1850	" " "	6,000+	1,000			
	As of Aug. 1830	Verne F. Ray		1,500		500	
	1840	" " "		700		500	
	1855	" " "		500		500	

Lewis R. Cowlitz		Cowlitz (all)		Lower Columbia		
Ex.	Ray	Ex.	Ray	Ex.	Ray	
						3 villages; many huts; 100 men a battle; 300 meh, with allies
		2400	2400			very populous; 30 plank houses, Cowlitz Landing to "the forks" (Pkg'n) densely inhabited; miles to the sea, 2,000 men [6,000 persons]
				(10,000)	10,000	← shores lined with houses
						Warrior's Point village (near mouth of Lewis River) 100 persons
	400					One Lewis River settlement, 200 pers
						Vicinity of Cowlitz Landing: some hundreds
500*	500					" near Fort Vancouver
						Cowlitz Landing, 200
				4,000*	4,000	" Western District (Lewis R., 200; La Camas, 78; Kalama, 22+; St. Helens)
300+*	400					Lower + Upper ("white tribe") 450
						Cowlitz + Upper Chehalis, 800 (by sub tractio
						Cowlitz Landing, 300, Fords Prairie, 350
	300*			1200@		"Vancouver camp; @ (Chehalis & Columbia River Cowlitz Landing camp; were; [Ford's Prairie, 350 -- D. Cain]
						"Cowlitz + Taitnapam, 240"
	500					White Salmon concentration camp, 80
						Chinook, Chehalis, Cowlitz, 1,115
						Chinook, Chehalis, Cowlitz, 700-8
						Upper Chehalis, Cowlitz, 425
						Upper and Lower Cowlitz, 317
				15,000	10,000	Western District
			2,500			Cowlitz + Upper Chehalis, 4,00 pre-1830 (informant)
	500		2,500			
	500		1,700			
	500		1,500			

TESTIMONY OF VERNE F. RAY

Exhibit B

Summary of Estimates
of
Cowlitz Population

by Verne F. Ray

Note carefully:

1. All figures on this table are estimates. No census was ever taken of the Cowlitz Indians. (In 1854 William H. Tappan made a census of three localities among the Lewis River Cowlitz -- Pet.Ex. 54).

2. The notes on the tables are summaries, not verbatim quotations.

3. Where identification of divisions or localities has been necessary, this has been done by Verne F. Ray.

4. An effort has been made to eliminate all estimates which are unequivocally repetitions or plagiarized.

5. The column headed "Ex." (for Exhibit) presents the figures as they appear in the exhibit.

6. The column headed "Ray" gives weighted figures, as determined by Verne F. Ray, which take into account the percentage of the named group with which the estimator was acquainted, the sources of the information as indicated by the document, the knowledgeability of the estimator, and like factors. The figures in this column are not independent estimates by Ray, nor do they represent his opinion of the actual population for the named group at the date indicated. The latter are presented under his name at the end of the table.

7. Concerning certain of these estimates, George Gibbs wrote:

"That the estimates, even of residents, cannot be relied upon with confidence, has been made sufficiently evident by the discrepancies in our different attempts at an actual enumeration ...." (Pet.Ex. 60, p. 182); and

Captain Wilkes' estimate of 1841 "... furnishes a very incorrect statement even of the tribes that are given .... No conclusion can be drawn from it whatever. A more general one is contained in Captain Wilkes's pamphlet on Western America.... which is also much less than the actual number at that time. Yet more incorrect is the estimate of Lieutenants Warre and Vavasour, R.N., ... though, as regards [the eastern] part of the Territory, it is not so bad as the rest ...." (Pet.Ex. 50,p. 417); and

"It seems to be pretty certain that the lower tribes, instead of diminishing, are on the increase" in 1854-56. "... No epidemic diseases have recently attacked them." (Pet. Ex. 60, p. 181).

Governor Isaac I. Stevens (in Pet.Ex. 53) repeated Gibbs' criticism of the Wilkes and Warre and Vavasour figures. He also declared that "... the actual number of Indians is considerably larger than was assumed as the basis of the Treaties .... subsequent information has shown that the numbers were too small" (Pet.Ex. 61, p. 6) the estimate amounting to only about fifty percent of the actual numbers (Pet.Ex. 61, p. 1).

Senator GORTON. Although I think you did so in the course of your testimony, Ms. Williams, I would like once again firmly to ask whether or not the organization called "Sovereign Cowlitz" still exists?

Ms. WILLIAMS. No, it does not.

As a matter of fact, among the materials that I have asked to be included in the record, are affidavits from John Barnett and Donald Cloquet who are the original founders of the Sovereign Cowlitz. They confirm that the organization no longer exists. They are in full agreement with our bill as presented.

Senator GORTON. Everyone who had anything to do with that is a part of the presentation you are making here today, in other words?

Ms. WILLIAMS. Yes.

Senator GORTON. All right.

Would you tell me in your words what the status of the tribe's petition for recognition is?

Ms. WILLIAMS. Well, the feeling that I had from Mr. Fritz' testimony and Mr. Pennington's was that we have failed to turn our petition in on time.

Senator GORTON. That was the impression I got.

Ms. WILLIAMS. Right.

There is a process, a Federal acknowledgment project, that you go through in turning your petition in. There is a listing of tribes that are supposed to be taken in order, if I understand it.

So, a tribe, even if they turned their petition in, must wait its turn. Our turn has not come up.

So, we have been using this time to get our petition ready, but it is in final form; all the exhibits are finished; it is now being photocopied to be sent in.

So, I would almost say that, within 30 days, it will be here in Washington or at least in 60 days.

Senator GORTON. So, you are on the verge of making this petition then?

Ms. WILLIAMS. Oh, yes.

Senator GORTON. As far as you are concerned, you will have met all of the concerns expressed by the Department when it returned your petition to you some time ago?

Ms. WILLIAMS. Yes.

Senator GORTON. Section 3 of the bill, as Senator Jackson and I introduced it, provides that 20 percent of the judgment funds be set aside for lawful purposes which include the purchase of lands for the tribe which then would be taken into trust if the tribe gets congressional recognition.

Does the tribe intend to comply with the existing Department of Interior regulations relating to the acquisition of trust property or does the tribe intend that lands purchased under this section automatically become trust property if the tribe attains Federal recognition?

Ms. WILLIAMS. If we were to purchase land with a portion of our money—and that has not been determined yet— but, if we were, we would go through all the necessary steps, you know, proper process, not only with the Department of the Interior but with the local officials

inasmuch as, if the land were to become trust land, it would not be taxable.

However, that 20 percent of the distribution fund at this time would only amount to about $600,000. I know that our bill talked about forming a Cowlitz Reservation. To me, $600,000 will not buy very much land.

Our intent would be, if we did have a piece of property, to put an office on it, a cultural center and a museum, plus, we would need to be using funds to run our tribe.

So, all of these are just ideas. None of this is firm, but we want to not be precluded from purchase of land.

Senator GORTON. What you are really telling me is that you do not have firm plans at this point as to what would be done with that $600,000.

Ms. WILLIAMS. No, right.

Senator GORTON. As a matter of fact, recognition or nonrecognition may not have much to do with that decision. If you were not recognized, you would be likely to purchase land and put up a cultural center and a tribal headquarters.

Ms. WILLIAMS. Right. To me, there would be no difference in what we would do with that money or with that land or that office, whether we would be recognized or not. We still consider ourselves the tribe. We are going to go on functioning even if they would have turned us down in our acknowledgement request.

Senator GORTON. That was precisely what I wished to know.

With that, I thank you especially for coming here and also the other two who have come along with you. It helped us a great deal.

Thank you very much.

Ms. WILLIAMS. Thank you.

Senator GORTON. Mr. Fritz, we will ask you back again to testify on the Las Vegas bill, S. 2998.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MR. RICH ATWATER, STAFF ASSISTANT TO THE ASSISTANT SECRETARY OF LAND AND WATER, DEPARTMENT OF THE INTERIOR

Mr. FRITZ. Once again, Mr. Chairman, I am pleased to appear before the committee to give them the views of the Department of the Interior with respect to S. 2998, a bill to declare that the United States hold certain lands in trust for the Las Vegas Paiute Tribe.

With me today is Mr. Rich Atwater, Staff Assistant to the Assistant Secretary of Land and Water, U.S. Department of the Interior.

I am pleased to have this opportunity, as I indicated, to discuss this bill.

In the short time available to review this proposed legislation, we have identified a number of factual and other issues relevant to the bill but have not yet had sufficient time to answer all the questions that have been raised. For these reasons, we recommend that action on S. 2998 be deferred until a more detailed analysis can be completed by the Department.

S. 2998, if enacted, would authorize the transfer of approximately 3,700 acres of public lands to the Las Vegas Paiute Tribe. Such lands would be held in trust for the Las Vegas Paiute Tribe and be made a part of the Las Vegas Paiute Reservation. The transfer would be subject to all "valid existing rights."

The purpose of this legislation is to provide the Las Vegas Paiute Tribe with a larger land base, to enable its members to become more economically self-sufficient and improve its general socioeconomic status. However, the transfer of Federal property to any entity, whether other Federal agency, State, Indian tribe, or private citizen, without payment of fair market value for the Treasury is inconsistent with the administration's asset management initiative formulated in response to Executive Order 12348.

Further analysis of the questions raised by S. 2998 will determine the consistency of this bill's goals with other land management objectives. Payment for the land could be made through at least two possible mechanisms: direct appropriation in an amount equal to the market value of the subject lands; or installment payments by the tribe at market rates of interest over a reasonable period of time.

The existing Las Vegas Paiute Colony site, located in the city of Las Vegas, consists of 12½ acres, 10 acres of which were acquired in 1911 with funds appropriated by Congress. The tribe later purchased a 2½-acre parcel adjacent to the 10-acre tract, using tribal funds.

The majority of this land is fully utilized by streets, a cemetery, communty service buildings and a commercial building; the small remainder of the property is devoted to residential use and is occupied by 28 dwellings for many of the tribe's 143 enrolled members.

Onreservation employment is currently provided for some tribal members through several tribal businesses. A community center, which opened in September 1981, was constructed with joint tribal and U.S. Department of Housing and Urban Development community development block grant program funds. The majority of this construction project utilized Indian laborers. Also in 1981, the Las Vegas Paiute Construction Co. was formed. The construction company is bonded, employs 26 individuals and has the ability to perform all types of building construction on or off the reservation.

Through the personal capital of the tribal chairman and vice chairman, a smoke shop operation of the tribe was started. This tribal enterprise has emerged not only as a successful business, but also as a primary source of funds for social and community needs.

The tribe has also created its own social service and education programs and maintains tribal council offices and a tribal court. The tribe has employed a police officer to enforce and carry out law enforcement and safety regulations on the reservation. The tribal police officer works in conjunction with State, county, and city law enforcement agencies. The cost of this service is paid for with tribal funds.

If enacted, S. 2998 would provide the Las Vegas Paiute Tribe an increased land base, which would enable the tribe to house its growing population and expand its business operations to provide the economic base needed for the support of that population.

If the additional land is acquired, the tribe plans to provide the necessary lands to tribal members for independent and privately

financed housing. Providing specific tracts of the subject land for the construction of public housing for tribal members is also being planned.

Another specific use included in the tribe's land use plan for the lands described in S. 2998 is business development, which includes agricultural development and the establishment of an industrial park for light manufacturing and industry.

The public land that would be transferred under S. 2998 is located 15 miles northwest of the existing reservation and has a right-of-way for a highway and powerlines across many of the sections. These roads and powerlines, however, are viewed as a positive factor because commercial and light industrial uses of the property will be enhanced by the traffic and power supply available to the area.

The location is extremely suitable for a truckstop and service center, because no service of this type is currently available in the near vicinity.

In addition, the Mount Charleston Ski Area is located approximately 7 miles west of the subject lands. Accommodations for enthusiasts are not available and thus a motel, ski and sport shop could profitably be located in a shopping complex.

Other uses for this land could include a sand and gravel operation in conjunction with a concrete batch plant. As growth of the cities progresses near the site through construction of dwellings, streets and other amenities, a demand for such products may be created.

Several factors were considered by the tribe in selecting the subject block of land. It should be large enough to allow for housing, commercial, light industrial, and agricultural purposes, consistent with the tribal land use plan. It should also have access to a major highway. It should allow room for a sand and gravel operation for the immediate direct benefits of the tribal construction company and as an important source of future revenue.

There are other lands available which are nearer to the tribe's existing reservation. However, they do not meet the needs of the tribe as well as those described in S. 2998. Lands closer to Las Vegas are subject to the provisions of Public Law 96–586, (94 Stat. 3381), an act which provides for the sale of public lands in Las Vegas to acquire lands in the Lake Tahoe area.

The Department's review of the proposed land transfer has raised a number of issues which merit further evaluation before a recommendation is made.

Those issues include the following: No. 1, no comparable sales or appraised values have been identified to date in the vicinity of the subject lands. This makes a determination of fair market value highly subjective and subject to challenge. The wide range of possible values is illustrated by the fact that representatives of the Bureau of Land Management have submitted estimates of $50 to $2,000 per acre, depending on projected or potential uses; access to transportation, water, and utilities; and other market factors. No. 2, the land in question is not presently agricultural in nature, and the depth to the water table and associated drilling costs are such as to preclude standard agricultural development. In addition, water development could interfere with the Las Vegas municipal water supply. For these reasons, one individual Indian's allotment application for agricultural land

in the area has been turned down, and four other applications will likely also be turned down. However, other land and water uses are possible, and the protection of valid existing rights, including water and pending applications should be specifically safeguarded by this legislation; that is, specific categories of valid rights should be mentioned and the scope of those rights addressed.

Because of these and other uncertainties surrounding the proposed legislation, we cannot support enactment of S. 2998 at this time. We recommend that action on the bill be deferred for a 120-day period to enable the Department to appoint a team of specialists to prepare a report to your committee.

We recognize that the tribe is anxious to proceed with its plans. However, we believe it will be in everyone's best interest if potential problems and conflicts can be identified and resolved in advance of the bill's enactment, rather than be left to lengthy litigation in the courts afterward. We pledge our commitment of the Department's personnel and other resources, to insure that these matters are resolved as expeditiously as possible.

This concludes my statement. I shall be pleased to respond to any questions the committee might have.

Senator GORTON. Mr. Fritz, do you have or do your associates have a picture of this land in your mind's eye which you could share with me?

Is it a desert? Is something growing on it? Is any portion of it developed at the present time? What does it look like?

Mr. ATWATER. Sir, it is vacant land. It fronts on both sides of U.S. 95, approximately 15 miles northwest from downtown Las Vegas.

Senator GORTON. That is the highway from Las Vegas north to Reno?

Mr. ATWATER. That is correct. So, it is a major arterial highway.

Senator GORTON. It does have substantial frontage on that highway.

Mr. ATWATER. Yes, on both sides. The property extends on both sides of the highway.

Senator GORTON. But, it is unimproved? There are no buildings on it?

Mr. ATWATER. That is correct.

Senator GORTON. I gather that we have estimates of valuation that vary from $50 an acre to $2,000 an acre, which is a pretty wide discrepancy. Does that simply mean that some of it is worth $50 an acre and some of it is worth $2,000 an acre?

Mr. ATWATER. First, that is an estimate. As I have just indicated, some of the property does front on this major highway between Las Vegas and Reno. That certainly reflects the high evaluation.

Some of the land of course being in arroyos, dry river beds, and that sort of thing, reflects the lower value.

Senator GORTON. What you are saying is not that you are just making a wild guess that the land taken as a whole is worth between those two figures, but that some of it is closer to the higher of those two figures and some is closer to the lower?

Mr. ATWATER. That is correct.

Senator GORTON. If the land is purchased for or by the tribe, where would the money go in the Federal Government?

There is a purchase by or for the tribe. Would the money go into any kind of restrictive fund or just into the general funds of the United States?

Mr. ATWATER. Under the Federal Land Management Policy Act, the Reclamation Act, those funds would be disbursed as follows: 76 percent of those funds received would go in the reclamation fund, 20 percent would go in the general Federal treasury and 4 percent to the State of Nevada.

Senator GORTON. With that introduction, I thank you. We will have to ask you again to wait for the third bill, if you will, while we hear from Mr. Frye, Mr. Patrick, Mr. Eckstein, and Miss Henry.

Mr. Frye, without objection, your full statement will be made a part of the record. Please proceed.

STATEMENT OF BILLY J. FRYE, CHAIRMAN, LAS VEGAS PAIUTE TRIBAL COUNCIL, LAS VEGAS, NEV., ACCOMPANIED BY MARGARET HENRY, VICE CHAIRWOMAN; AND MR. CARMEN PATRICK, TRIBAL COUNCIL MEMBER

Mr. FRYE. Mr. Chairman, my name is Billy J. Frye, chairman of the Las Vegas Tribal Council of Nevada.

Accompanying me today is Margaret Henry, vice chairwoman of the Las Vegas Paiute Tribal Council, and Mr. Carmen Patrick, a senior member of the Las Vegas Paiute Tribal Council.

Mr. Chairman, the Las Vegas Paiute Tribe is grateful for the opportunity to testify before the committee today in support of S. 2998.

I will quickly summarize my written statement.

The bill will transfer 3,700 acres more or less of land into a trust for our tribe.

Mr. Chairman, our people have occupied this southern Nevada land far in excess of 1,000 years. Our current reservation consists of a meager 12½ acres and has for a long time been insufficient to accommodate the tribe and its needs. Many of our family members have been required to move or relocate outside of the reservation's boundaries.

The inability to maintain customary family closeness has caused a deterioration of the culture, family, and spiritual foundation among our people. For decades, our land has been inadequate for our basic needs. Yet, the population of our tribe continues to increase substantially.

In addition, because of our location, the tribe serves as the only central point of services and information for an additional 3,000 Paiutes residing in the general Las Vegas area.

Our tribe desires to retain its cultural identity, to achieve social and economic self-sufficiency, to become less dependent upon the Federal Government. Our people are confident that we can attain these much desired goals, but they also realize that to reach the goals, we must have a sufficient land base.

We have used what little land that has been available to us very well; we have achieved much with very little. We have accomplished much, yet, there remains much to be accomplished.

With your support of S. 2998, you can make available to our people the land necessary to reach the goals of economic self-sufficiency but of most importance, you will also have helped our tribal members to

have the opportunity to become families again and to reverse the deterioration of our spiritual and cultural values.

Mr. Carmen Patrick would like to say a few words.

Senator GORTON. Excuse me. Before we go on to him, I believe I must have misunderstood what you said when you referred to the tract that you are seeking.

Is it 3,700 acres?

Mr. FRYE. 3,700 acres.

Senator GORTON. Senator Cannon in introducing the bill said 3,150 acres.

Mr. FRYE. We did include the roads and whatever.

Senator GORTON. I see. But, it is 3,700 acres, is not that correct?

Mr. FRYE. Yes.

Senator GORTON. All right. Thank you.

Mr. Patrick?

Mr. PATRICK. I would like to make a short statement, sir.

I would like to say that we need this land to keep up our tradition and our culture. We need to get unified again.

The land that we have right now is mostly our grave sites. We have a quarter of an acre, and this is crowded. This will give us more land for expansion of the grave sites.

That is all I have to say. I want to thank you for this opportunity, Senator.

Mr. FRYE. Mike Eckstein can give you a little more information on the land and the background.

Senator GORTON. Before Mr. Eckstein speaks, let me at this time say that, without objection, a copy of Mr. Frye's written remarks will be placed into the record at this point.

[The statement follows. Oral testimony resumes on p. 86.]

PREPARED STATEMENT OF BILLY J. FRYE, CHAIRMAN, LAS VEGAS PAIUTE TRIBAL COUNCIL

Mr. Chairman: My name is Billy J. Frye, Chairman of the Las Vegas Tribal Council of Nevada. Accompanying me today is Margaret Henry, Vice Chairwoman of the Las Vegas Paiute Tribal Council, and Mr. Carmen Patrick, a senior member of the Las Vegas Paiute Tribal Council.

We thank you for the opportunity to appear today in support of S. 2998.

In 1912 the Las Vegas Paiute Tribe received 10 acres of land for use by the Tribe. The land was acquired through purchase by the United States Government from Mrs. Helen Stewart, a devoted friend of the Paiutes. At that time our Tribe was quite small in number, as we were spread throughout our ancestral land. Since then our population has grown many times. We have used this meager 10 acres of land in the most efficient and practical manner possible. From it we have provided housing, community services and a limited economic base. We recently acquired, through purchase, with tribal funds, an additional 2½ acres of land which is contiguous to the 10 acres and used for these same purposes.

The present 12½ acres can no longer provide room for our needed housing and community services and there remains no room for economic growth or development. This inadequate land base has severely curtailed the ability of the Tribe to achieve its self-imposed goals of social and economic self-sufficiency and a desire to attain diminished reliance on federal support.

Of equal importance is the accelerated deterioration of family, culture and spiritual values and traditions which the Paiutes have embraced for countless years. This deterioration is being brought upon us by the inability of our Tribal members to maintain family units within the reservation due to the lack of land.

The Las Vegas Paiute Tribe wishes to achieve social and economic self-sufficiency through its own economic initiatives. We wish to provide to our

members a land base upon which we can and will perpetuate family, cultural and spiritual values.

S. 2998 provides the opportunity to reach these goals. We have fully demonstrated our determination to achieve these goals and to diminish reliance on government support by the efficient utilization of our existing 12½ acres.

The Las Vegas Paiute Tribe of Nevada is fully aware of current and proposed federal reductions in grant and contract dollars. The designated lands will provide an ability to expand and develop business which will generate revenues to fill existing and projected gaps in federal funding.

The Tribe has prepared and developed a land use plan for this particular land. The plan documents and demonstrates the beneficial uses for which the Tribe will utilize the lands. The projected development of the subject lands by the Tribe will result in measurable economic and social gains for the state, county and city, as a direct result of spinoff business and employment outside the reservation.

Discussions with the Nevada Congressional delegation indicated that the Las Vegas Paiute Tribe would be required to meet several conditions. These included the contacting of Nevada state officials, city officials, county planning officials, and adjacent landowners to discuss the purpose of S. 2998 and intended use of the lands to be transferred. Without exception, all of these officials, organizations and residents were contacted and provided with our land use plan. We are proud to say that each and every meeting and contact has resulted in total support of the land transfer. Representative documents of support have been compiled and are attached hereto.

The intensive planning process undertaken by the Las Vegas Paiute Tribe in conjunction with the demonstrated success and wise use of its current land has resulted in a proposed set of land uses which will improve and accelerate Tribal social and economic conditions, provide an environment conducive to family, cultural and traditional values and be an asset to the people of the State of Nevada.

In closing, we respectfully request the Committee's support for the passage of S. 2998. Thank you.

[Subsequent to the hearing the following information was received for the record:]

DECEMBER 9, 1982.

Mr. Chairman: Several matters surfaced during the hearing on S. 2998 (Laxalt and Cannon) which I wish to clarify:

The statement of the Department of Interior states that certain factual issues had been raised but not answered in the "short time available." That statement distresses me for our tribe and embarrasses me for the Administration.

All other parties had time to review the proposed legislation, including the BIA, BLM, State of Nevada, Clark County, the Cities of Las Vegas and North Las Vegas and many neighbors, as well as Senators Paul Laxalt and Howard W. Cannon. All approve the land transfer.

Until the day of the hearing the BIA had recommended enactment of S. 2998 with an essential perfecting amendment to include the 10-acre parcel now occupied by our tribe. This is still the unanimous opinion, except in the testimony of the Deputy Assistant Secretary. (See copy of enclosed BIA Memorandum, which contains suggested amendments.)

Enactment of S. 2998, as amended, is particularly urgent now. Since the introduction of this bill, it was learned that the 10-acre parcel now occupied by our tribe is not held in trust for the tribe but is simply owned by the United States and acquired for the "use of the Paiutes." All of our operations and status are in jeopardy. We need a quick resolution of our precarious dilemma which can be accomplished by enactment of S. 2998 with the amendments suggested by BIA. The request for further delay by the Department is particularly galling because of the newly discovered circumstances.

The Department statement creates some serious misconceptions. The Department has known for many years, decades in fact, that the Paiutes need more land to enable them to become economically self-sufficient. The Department has learned from a variety of internal and external sources that the Paiutes have searched the area in and around Las Vegas for land that would be suitable for our social and economic needs. But after years of searching and advice and counsel from the Department, and after finding a plot of suitable land and after obtaining the approval of all other governmental agencies, private owners and

neighbors, the Department intervenes once again to frustrate the objectives of the Paiutes.

In an unseemly, ambiguous fashion the Administration and the Congress encourage the Indians to become self-sufficient, yet the Department frustrates them at every turn. It is little wonder that Indians despair of our treatment by the bureaucracy. Every request for "deferment" in the past has resulted in dropping the project except for "continuing study or investigation" by the bureaurcacy. Our dreams and plans have been deferred to death while the bureaucracy thrives.

In response to one question asked by you, Mr. Chairman, our tribe intends to utilize all of its resources to accomplish its tribal goals and to cooperate with its neighbors. As the land use and development plan indicates, BIA funds represent only one of many sources of potential funding for the overall economic and social goals of the tribe. Of utmost importance, the Las Vegas Tribe itself intends to provide, to the maximum extent possible, resources and moneys of the tribe to attain these goals.

It is impossible for our tribe, in its current financial straits, to repurchase this acreage. Hundreds of years ago, we owned and occupied this very land and thousands of square miles around it. These parcels are part of our sacred aboriginal lands. The U.S. government paid nothing for the land and did not win it by war. It would be a shame and an outrage for the government to extract money from the poorest of the poor for the transfer of vacant, unused land (albeit straddling a highway with access to power lines) from one government agency to another in trust for the use only of the Las Vegas Paiutes. The intended transfer is not a fee purchase. All "values" estimates mentioned by the statement ($50 to $2,000) were only guesses. There is no evidence of comparable transfers or values. The $2,000 "possible value" was not even an estimate and would, admittedly, depend upon "potential uses." At present there are no uses and no water. The $2,000 "possible value" was withdrawn and reduced to $350. Even that figure is excessive for the location and condition of the land. The Las Vegas Paiute Indians might make somethng of this vacant desert land. No one else has. If there is or has been any potential use or projected value, it will be developed by the Las Vegas Paiutes. In decades of outright, exclusive possession by the government, there has been no use and a minimal value.

The specter of Executive Order 12348 is again raised without basis or merit. This transfer is not the kind intended to require payment of a fair market value. This transfer is quite different from a case where the government purchased land for good value, used the land for a temporary purpose, declared it surplus, and then decided to sell it to another owner. In such case, a "fair price" would be rightly expected by buyers, sellers and taxpayers. But Executive Order 12348 was never intended to apply in cases where the government acquired the land for nothing, had no use for it, and could return it for the beneficial use (only) of the original owners. The Congress should pass this bill if only for the purpose of clarifying the intent and testing the validity of Executive Order 12348. The application of Executive Order 12348 to this transfer would embarrass the Administration and the Congress. The President would not veto the bill.

The Las Vegas Paiutes have demonstrated that they are ambitious, progressive and successful in their economic enterprises upon the meager 12½ acres available to them. The evidence, substantiated by the materials submitted for the record, indicates that additional land is urgently needed to enable the Las Paiutes to reassemble our tribal families in one area, to maintain our traditional culture, spiritual values, and to permit us to develop an economic base sufficient to support ourselves.

The Las Vegas Paiutes have accomplished as much as anyone could ever begin to expect upon our limited 12½ acres. Where other tribes are suffering tragically high unemployment (as much as 70 percent, perhaps the highest of any group of American citizens), we have practically no unemployment. With a land base, we can continue to produce jobs for ourselves and others and obtain economic self-sufficiency and a high possibility of revenues to the state as a result of support business. Without land, we are strapped and frustrated and our ancient tribal bonds are being eroded.

A detailed economic development and land use plan is included in our prepared statement. (See copy attached.) It is ambitious but quite reasonable. It is the product of long study and expert counsel. It is fully compatible with the long-range plans of our neighbors and all affected governments.

16-864 O - 83 - 6

We are appalled that the Administration would contradict all of its policies and promises—such as the encouragement of social and cultural identity, economic self-sufficiency and reduction of unemployment among Native Americans.

The Department's statement is confusing. It states that there are other lands "nearer the tribe's existing reservation but they do not meet the needs of the tribe as well as those described in S. 2998." Our people are well aware of this non-sequitur. We have searched for land for years. We have selected land that no one else wanted or could use. We indeed selected land not subject to Public Law 95–586. We could have selected land of higher value, closer to Las Vegas, that would meet our needs. We did not. Our request is quite modest. We want and need some isolation from development.

Las Vegas and other affected municipalities are aware of the water conditions. We have worked with them and will continue to do so. Our water needs, for use and conservation, are mutual.

There is no conflict with the Burton-Santini legislation. The State of Nevada was specifically notified of the selection of this parcel and it voiced no objection. The Clark County Department of Comprehensive Planning was contacted to identify any potential conflicts; none existed. (See attached letter from Donald L. Shalmy, Director). Any suggestion of such a potential conflict is a technical "red herring." After notice of our application for this land, the Clark County School District applied for several small tracts. This presents no problem. We would welcome schools on the property. The schools would serve our children. We would continue to cooperate with local school officials.

The land transfer is explicitly subject to all existing rights of way, water and minerals. No valid right will be prejudiced by the proposed transfers. We will be seriously prejudiced, however, by a deferral.

The specter of "lengthy litigation" is another "red herring." The "potential problems and conflicts" are figments of imagination for stalling purposes only.

We cannot rely on the Interior Department. We can only rely on the Congress. We respectfully request immediate passage of S. 2998, with the amendments suggested by BIA, and that the bill, as amended, be attached to another House bill pending before your committee.

Mr. Chairman, we consider the circumstances and needs of our tribe to be as compelling in every respect as the needs and circumstances of S. 1858 which became Public Law 288 on October 6, 1982.

Again, we thank you.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20240

MEMORANDUM

To: Legislative Counsel

Through: Assistant Secretary - Indian Affairs

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: S. 2998, a bill "To declare that the United States holds certain lands in trust for the Las Vegas Paiute Tribe."

We recommend the enactment of S. 2998 if amended as we suggest below.

Analysis

The enactment of S. 2998 would authorize the Secretary of the Interior to transfer 3,840 acres of public lands, located in Clark County, Nevada, to the Las Vegas Paiute Tribe. Such lands to be held in trust for the Las Vegas Paiute Tribe and made part of the Las Vegas Paiute Reservation.

The transfer would be subject to all "valid existing rights", including rights-of-way, mining claims, grazing permits, water rights, or other rights or interests which any person may have in the subject lands on the date preceding the date of enactment of this Act.

If enacted, S. 2998 would also provide the Las Vegas Paiute Tribe with a long term leasing authority, the only governmental action being approval by the Secretary of the Interior.

Finally, if enacted, the subject bill would assure that section 164 of the Clean Air Act Amendments of 1977 (91 Stat. 733; 42 U.S.C. 7474) will apply to the area being transferred in trust to the Las Vegas Paiute Tribe. Subsections (c) and (e) of that Act specifically give to the State and the Indian tribe mutual remedies in the event of a redesignation of areas within the jurisdiction that might be detrimental to the interest of the other party.

Background

The present Las Vegas Colony site located in the City of Las Vegas consists of two tracts of land, one of which is a ten-acre tract acquired in 1911 with funds appropriated by Congress (See 36 Stat. 1067, sec. 11). Title to this land was taken in the name of the United States by deed dated December 30, 1911. Although the deed states that the land was acquired for the use of "Paiute Indians", the historical file makes it clear that these lands were purchased especially for the use of the Las Vegas Paiutes.

The other tract of land included in the Las Vegas Colony site is a two and one-half-acre parcel which was purchased by the tribe, with tribal funds, in No ember, 1978.

On May 17, 1935, the Indians residing in the Colony voted to accept the Indian Reorganization Act of 1934 (48 Stat. 984), and later adopted a constitution and bylaws which was approved by the Secretary of the Interior on July 27, 1970.

The tribe, consisting of 143 members at the present time, now has 12 1/2 acres of land for its use and benefit. This land is fully utilized with streets, a cemetery, community service building, and a commercial building; the remainder of the property is devoted to residential use and is occupied by 28 dwellings.

On-reservation employment is currently provided for some tribal members through several tribal businesses. A community center, which opened in September, 1981, was contructed with joint tribal and U.S. Department of Housing and Urban development community development block grant program funds. The majority of this construction project utilized Indian laborers. Also, in 1981, the Las Vegas Paiute Construction Company was formed. The construction company is bonded and employs 36 individuals and has the ability to perform all types of building construction on or off the reservation.

Through the personal capital of the Tribal Chairman and Vice Chairman, a smoke shop operation for the tribe was started. This tribal enterprise has emerged not only as a successful business, but also as a primary source of funds for soc.al and community needs. The tribe has also created its own social service and education programs, and maintains tribal council offices and a tribal court. The tribe has employed a police officer to enforce and carry out law enforcement and safety regulations on the reservation. The tribal police officer works in conjunction with State, County and City law enforcement agencies. The cost of this service is paid for with tribal funds.

If enacted, S. 2998 would provide the Las Vegas Paiute Tribe an increased land base which would enable the Tribe to house its growing population and expand its business operations to provide the economic base needed for the support of that population.

If the additional land is acquired, the Tribe plans to provide the necessary lands to tribal members for independent and privately financed housing. Providing specific tracts of the subject land for the construction of public housing for tribal members is also being planned.

Another specific use included in the Tribe's land-use plan for the lands described in S. 2998 is business development which includes the establishment of an industrial park for light manufacturing and industry; and agricultural

development. Realizing the scarcity of water in the Nevada area, the possible application of the "hydroponics" process would be the primary consideration, thus eliminating to a substantial degree the need for water.

The public land that would be transferred under S. 2998, located 15 miles northwest of the existing reservation, is currently managed by the Bureau of Land Management.

The subject property has a right-of-way for a highway and power lines across many of the sections. This, however, is viewed as a positive factor in that commercial and light industrial uses of the property will be enhanced by the traffic available to and through the area.

The location is extremely suitable for a truck stop and service center, since no service of this type is available in the near vicinity. In addition, the Mt. Charleston Ski Area is located approximately 7 miles west of the subject lands. Accommodations for enthusiasts are not available and thus, a motel, ski and sport shop could be located in a shopping complex.

The Cities of Las Vegas and North Las Vegas are expanding continually, its growth being in the northwesterly direction. Services for the expanded cities are not presently available in the near vicinity, making service facilities a viable prospect.

Other uses for this land could include a sand and gravel operation in conjunction with a concrete batch plant. As growth of the cities progresses near the site through construction of dwellings, streets and other amenities, a demand for such products will generate.

Although we defer to BLM for more specific information, we understand that the estimated fair market value of subject property is between $1,800 and $2,000 per acre, for a total value of $6,912,000 to $7,680,000. These figures are based on comparable land in the near vicinity.

The Las Vegas Tribe does not have sufficient funding available nor an adequate cash flow from its existing enterprises to be able to expand its land base by purchase. It is, therefore, imperative that a suitable land base be made available so that tribal revenues can be used for expansion of enterprises now in existence to relieve unemployment in the area and to assist in development of skills within the Indian community. A purchased land base will deplete or pledge revenue for a long period of time, thus negating the reason for the expanded base and would be a frustration of efforts to attain economic self sufficiency.

Several factors were considered by the tribe in selecting the subject block of land. It should be large enough to allow for housing, commercial, light industrial and agricultural purposes, consistent with the tribal land use

plan. It should also have access to a major highway. It should allow room for a sand and gravel operation for the immediate direct benefits of the Tribal Construction Company and as an important source for future revenue as existing and gravel sites nearer Las Vegas are depleted.

There are other lands available which are nearer the tribe's existing reservation, however, they do not meet the needs of the tribe as well as those described in S. 2998. Also, lands closer to Las Vegas are subject to the provisions of Public Law 96-586 (94 Stat. 3381) an Act which provides for exchange of lands near Las Vegas for lands in the Lake Tahoe area. Selections of lands in that area would interfere with the intent of that Act which would raise the value of the lands, if selected by the tribe, to a prohibitively high figure, perhaps to as much as 5 to 20 times as valuable, on an acreage basis, as the lands being requested by the tribe in S. 2998.

Amendments

We suggest an amendment to S. 2998 which would grant to the Las Vegas Paiute Tribe in Nevada the beneficial interest in the 10.00 acres of land the tribe has been using and occupying since the land was acquired by the Federal government by purchase from a private individual for the use of Paiute Indians on December 30, 1911. Title to the 10-acre parcel was taken in the name of the United States. Our amendment would transfer the beneficial ownership from the United States to the Las Vegas Paiute Tribe, thereby resolving any doubt of the rights and interest of the tribe in the land. To accomplish this, we suggest adding the following paragraph to subsection (a), page 3, after line 18:

> "Township 20 south, range 61 east, Mount Diablo base line and meridian, 10 acres of land within section 27 as acquired by the United States for the use of Paiute Indians by deed dated December 30, 1911, said deed being of record in Book 2, Page 246 in Clark County, Nevada."

We also suggest that subsection (c) of S. 2998 which would provide the Las Vegas Paiute long term leasing authority be amended for purposes of clarity by deleting it in its entirety and inserting in lieu thereof the following:

> "(c) Section 1 of the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415), is further amended by inserting ", and lands held in trust for the Las Vegas Paiute Tribe of Indians", immediately after "Chelan County, Washington," in the second sentence."

Land Use Plan

The specific use identified for the additional land added to the reservation falls into two (2) major categories:

A. Housing

- o Provide necessary lands to Tribal members for independent and privately financed housing

- ó Several employed members of the tribe are in need of housing, however there is no land available for this purpose within the reservation. These individual members wish to retain their identity as Paiutes by remaining on the Paiute Indian Reservation. The additional land base that is being requested will insure the cohesiveness and continuance of that identity. Source of possible funding for private housing are as follows:

  —Bureau of Indian Affairs (Credit Program)
  —Individual
  —Veterans Administration
  —Conventional Lending
  —Farmers Home Administration
  —Federal Housing Administration

- o Provide specific tracts of land for the construction of public and related housing for Tribal members

- ó Many of the unemployed and low income Tribal families cannot bear the cost of privately owned housing, yet the need for such continues to exist. With the requested land base, the land necessary to construct public housing will become available and will present the opportunity for these families to move out of substandard housing which they currently occupy. Possible sources of funding for public housing are as follows:

  —Housing and Urban Development
  —Farmers Home Administration
  —VArious Housing Subsidized Programs

B. Business Development

- o Establish an industrial park for light manufacturing and industry

Several private sector business have approached the Las Vegas Paiute Tribe to discuss the potential possibilities of establishing a business through a joint venture or sole ownership by the Tribe. To date these include a prefab steel building manufacturer, two (2) electronics assembly manufacturers and produce wholesale distributors. In all discussions to date, the need for an adequate land base to facilitate the proposed business, has in fact terminated or delayed further discussions. Possible sources of funding for these potential business are as follows:

—Private Sector (Proposed Business)
—Small Business Administration
—Bureau of Indian Affairs (Credit Program)
—Housing and Urban Development (Block Grants)
—Lending Institutions
—Tribal Funds, Limited
—Bureau of Indian Affairs (Economic Development Grants)
—Farmers Home Administration

o Establish several business site leases for private Indian business entreprenures

There is a need to provide business site leases to the individually qualified members of our Tribe. Many members have proven capability and education to enter and establish their own (cottage industries), however, the lack of a sufficient land base precludes this opportunity. Principal sources of funding for the individual entrepreneur are as follows:

—Private Sector (Franchise)
—Small Business Administration
—Bureau of Indian Affairs (Credit Program)
—Lending Institutions
—Individual

o Establish and set aside tracts of land for agricultural development possibility (Hydrophonics)

There is without question a need for the growing of produce on a large scale to meet the market demand for the Las Vegas area. Currently the majority (approximately 80 percent) of all produce is imported from California or Mexico resulting in a substantial cost to the purchaser and ultimately to the consumer. Realizing the scarcity of water in the Nevada area, the possible application of the "Hydrophonics" process would be the primary consideration, thus eliminating to a substantial degree for the need of water. Possible sources of funding for this potential agricultural development are as follows:

—Private Sector (Joint Venture with Agricultural Company)
—Small Business Administration
—Bureau of Indian Affairs (Credit Program)
—Department of Agriculture (Grants and Loans)
—Tribal Funds, Limited
—Bureau of Indian Affairs (Economic Development Grants)
—Farmers Home Administration

Clark County

Department of
Comprehensive Planning
DONALD L. "PAT" SHALMY
DIRECTOR
RICHARD E. HOLMES
ASSISTANT DIRECTOR
CLARK COUNTY BRIDGER BUILDING
225 BRIDGER AVENUE, SEVENTH FLOOR
LAS VEGAS, NEVADA 89155
(702) 386-4181

October 27, 1982

Mr. Vincent Lachelli
P.D.I.
600 Maryland Avenue, S.W.
West Wing, Suite 302
Washington, D. C. 20024

Dear Mr. Lachelli:

We have reviewed the information you have sent relating to the issue of land withdrawal for the Las Vegas Paiute Tribe in Clark County. We are pleased to report to you that we see no conflicts with the goals and objectives we have developed as part of our comprehensive planning process.

Please feel free to call on us if we can be of assistance in the development of your proposal.

Sincerely,

DEPARTMENT OF COMPREHENSIVE PLANNING

Donald L. Shalmy
Director

DLS:bm

Senator GORTON. Mr. Eckstein, please proceed.

STATEMENT OF MICHAEL ECKSTEIN, REALTY OFFICER, WESTERN NEVADA AGENCY, CARSON CITY, NEV.

Mr. ECKSTEIN. Mr. Chairman, I am an employee of the Bureau of Indian Affairs in Stewart, Nev. I am presently on annual leave, and I am here at the request of the tribe to support them. I am a civil engineer. I provide technical assistance and counseling for the tribe. I assisted them in their quest for some land.

They first approached me in early 1982 on the withdrawal of approximately 160 acres. I reviewed that land and found that it was unsuitable for their needs in that 80 acres was not available. The other 40 acres had four mining claims on it, which meant that it could not be used. The remaining 40 acres was so badly cut up with roads that it was virtually unusable as a commercial piece.

I then got together with the tribal members and the tribal council, and we searched around for areas that would be more suitable and that would meet their needs and which could be developed for their own purposes.

We came up with the tract of land near what is known as Kyle Canyon Road which is near a ski area. It has gravel available on it for their construction company to utilize. It has other potential because of the major highways and because of the powerlines that are there and the telephone system that is there.

These were given consideration in the selection. This was vacant land. There were no small parcels within it. The tribe first wanted to come a little closer to town, about 2 miles closer. This closer land was so badly cut up by small parcels, 10-acre parcels and 20-acre parcels, that it would have been a virtual checkerboard.

So, we went a little further north, toward a wildlife management area that will protect our northern flank, so to speak.

These are some of the considerations we gave in assisting them in the selection of this property.

Senator GORTON. Thank you very much.

Miss Henry, do you have anything to say?

Miss HENRY. No, I have nothing to say, Senator.

Senator GORTON. Mr. Frye, I have one or two questions for you.

Have you developed any specific plans for the use of the property?

Mr. FRYE. Yes. We have a few plans. We are talking about housing and economic development and schooling and the basic foundations for government.

Senator GORTON. Does the tribe have any financial base which might contribute to any of those goals? Or, would you expect that to come through the Bureau of Indian Affairs as well?

Mr. FRYE. The tribe currently has sources of internally generated revenues from its business operations. As in the past, these revenues will continue to be used to promote and to assist in creating and attaining economic and social self-sufficiency goals of the tribe.

Within the package of information, submitted in support of our testimony on S. 2998 is various data which depicts alternative sources of funding other than BIA which could be utilized in reaching our

goals. These include private sector business, lending institutions, and other governmental programs.

Senator GORTON. Have you had any appraisal or any independent evaluation of the value of these 3,700 acres?

Mr. ECKSTEIN. The only value that I could come up with was one in discussion with the Bureau of Land Management personnel in Reno and Las Vegas. Their estimates vary considerably.

We have not made an appraisal on the property as such because it has not been identified as property to be disposed of under the assets management program.

Senator GORTON. I see. So, there is no appraisal?

Mr. ECKSTEIN. Not at this present time.

Senator GORTON. Thank you, every one of you, for appearing here today.

Without objection, I have prepared statements from Senators Cannon and Laxalt pertaining to S. 2998 which will be made part of the record at this point.

[The statements follow:]

PREPARED STATEMENT OF HOWARD W. CANNON, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I appreciate the opportunity to submit for the record my comments on S. 2998, a bill to transfer approximately 3,700 acres of vacant, undeveloped public lands in trust to the Las Vegas Paiute Tribe.

The Las Vegas Paiute Tribe is a federally recognized Indian Tribe located near Las Vegas, Nevada. The original reservation consisted of only 10 acres, acquired in 1911. Since then, the Tribe has acquired an additional 2½ acres with their own meager funds.

The population of the Tribe has increased by 300 percent since 1911. In addition, 3,000 native Nevada Paiutes which the reservation was meant to serve are now widely scattered throughout the Las Vegas area. The present allocation of 12½ acres of land cannot accommodate the minimal needs of the tribal membership.

The Tribe wishes to continue, and to perpetuate, their traditional culture and practices but cannot do so with their membership so distantly separated from one another.

Additionally, the Tribe desires to pursue the commendable objectives of self-determination, economic self-sufficiency, and mutual involvement with the private sector but are thwarted by the paucity of land upon which to establish an economic base.

An earnest objective of the Las Vegas Paiutes is to diminish the historical reliance upon federal programs. The Tribe has already demonstrated its willingness and ability to develop an economic base and to utilize the special skills and enterprise of its members to generate tribal revenues. This business activity not only benefits Tribal members but adds to the economic base of other southern Nevada communities. This business development will be encouraged and facilitated by the land transfer.

The present reservation is wholly occupied and no longer available for additional development. The Tribe has put together an ambitious use plan for the additional land it seeks through this bill. The land would be used for residential housing, community support facilities, an industrial park for light manufacturing, and limited agricultural development.

I am advised that all interested and involved parties, the City of Las Vegas, the State of Nevada, the City of North Las Vegas and other neighboring interests support this transfer. All rights of way, minerals and water will be protected.

Mr. Chairman, I urge the Committee to act on this legislation as soon as possible. Thank you.

PREPARED STATEMENT OF PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman: I appreciate this opportunity to submit for the record my views in support of this Committee's favorable action on S. 2998, a bill to transfer in trust to the Las Vegas Paiute Tribe some 3,840 acres of public domain lands in Nevada.

The Las Vegas Paiute Tribe needs an additional land base on which to provide for the future economic development of the Tribe and for the housing and community service needs of its members.

The Tribe has undertaken an ambitious and far-sighted planning effort for the future. However, its economic and development goals cannot be met within the confines of the present small 12½ acre colony area. The Tribe, with the assistance of the Bureau of Indian Affairs, determined that a vacant tract of the public domain located northwest of Las Vegas, and comprising some 3,840 acres, would facilitate the Tribe's efforts.

I have been impressed by the ambitious and determined efforts of the Tribe's leadership to provide economic opportunities, maintain tribal cultural and spiritual heritage, and provide for the housing and social services of its members. It is appropriate that the Federal Government, under its long-held trust responsibility to Indians, assist in the growth and development of Indian communities where it can do so consistent with its responsibilities to the nation.

When the Tribe first approached the Nevada delegation about supporting this transfer, the delegation asked that the Tribe justify the transfer by submitting an overall plan for the land, that it work closely with all parties with an interest in the land, and that all existing rights be protected. The Tribe has moved with dispatch to fulfill all those conditions. The unanimity of local and state support for the Tribe in this proposal has been most encouraging.

The land involved is part of the aboriginal lands occupied by the Paiutes prior to the coming of settlers and has historic and spiritual significance to tribal members.

I hope the Committee will favorably report the measure. It is important to the Tribe to proceed with its plans. At the same time, the Congress can facilitate a worthy public purpose by giving the Tribe an opportunity for growth through self-reliance and the development of the talents of its members.

Senator GORTON. Now for the third and last time, we will ask Mr. Fritz to come back and to speak to us on the subject of the Miccosukee claim, S. 2893.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MR. THOMAS BOND, TRUST OFFICER FOR THE EASTERN AREA OFFICE, BUREAU OF INDIAN AFFAIRS

Mr. FRITZ. Mr. Chairman, once again, I am pleased to appear before the committee today and I am here to present——

Senator GORTON. Probably pleased to be before us for the last time. [Laughter.]

Mr. FRITZ. Like a bad joke, I keep coming back, sir.

I am pleased to be here to present the Department of the Interior's views on S. 2893, the Florida Indian Land Claims Settlement Act of 1982.

Appearing with me is Mr. Tom Bond, who is the Bureau of Indian Affairs' trust officer for the eastern area office located in Virginia.

The department recommends enactment of S. 2893, if it is amended as we suggest.

This bill would settle certain Indian land claims within the State of Florida, which has executed agreements with the Miccosukee Indian tribe to resolve tribal land claims and settle a lawsuit filed against the State in the U.S. District Court for the Southern District of Florida.

The Miccosukee tribe was organized January 11, 1962, pursuant to the Indian Reorganization Act of June 18, 1934, and has approximately 300 members. The tribe was granted a 50-year special use permit, which allows its members to live in the area of their ancestral homesites along the northern edge of the Everglades National Park, an area known as 40-Mile Bend, south of U.S. Highway 41. The State reservation set aside for the tribe is essentially unoccupied.

In January 1979, the tribe filed suit in the U.S. District Court in Florida, based upon the State's flooding of more than half of the State's reservation and upon the alleged establishment of a 5-million acre "Executive Order" reservation in southwestern Florida, including the cities of Naples and Fort Myers.

A settlement has been reached between the State and the tribe. Under the terms of the agreement, the tribe would receive settlement funds of $975,000 from the State in consideration for settling their lawsuit and relinquishing all rights to all potential or unsettled claims.

In addition, the Miccosukee State Indian reservation and three parcels of land along the Tamiami Trail would be taken into trust by the Secretary for the benefit of the Miccosukee tribe.

The settlement agreement also provides to the tribe approximately 189,000 acres of Everglades land under a perpetual lease. The State would still hold legal title to the leased area, but the leased area would be treated for certain purposes as a Federal Indian reservation.

The Governor and cabinet of the State of Florida approved the settlement agreement on October 6, 1981. The Miccosukee tribe approved it on March 8, 1982. The district court tentatively approved it on July 2, 1982. The State legislature approved the agreement in advance on July 26, 1981. The settlement agreement will terminate unless congressional approval is given by December 31, 1982.

The proposed legislative settlement is a culmination of negotiations between the Miccosukee tribe and the State of Florida and has the approval of both parties. While the Department has not participated in the negotiations, we believe the bill would clarify the utilization of lands in southern Florida by terminating a lawsuit and would make it easier to provide other services in addition to those already provided by the establishment of a Federal reservation. Unlike previous land claims legislation, this proposal places 76,800 acres into Federal trust status for the Miccosukee tribe with no direct Federal Government costs associated with the settlement.

Although there will be administrative costs associated with these additional acres of trust land and with acquiring Federal trust status for the lands, we do not expect these costs to be significant and anticipate that they would be absorbed into the annual budget of the Bureau of Indian Affairs.

We also note that active management expenses, including survey expenses, estimated to be approximately $100,000, will be incurred when the acreage transfer is complete.

The settlement agreement would also provide leased lands to the Miccosukee tribe, pursuant to a perpetual lease that would be issued by the State of Florida. The amount of land involved is 189,000 acres, compared to the 5 million acres the tribe claimed in its suit. Further-

more, the "perpetual lease" does not compare to Federal trust land status.

We understand that initially the tribe wanted the land taken into trust but was unable to negotiate this concession. The precise status of the land, however, has become less important to the tribe since the lease would protect its proprietary interests by giving the tribe the right to use the land, which is its highest priority.

Further, section 6 of the bill would treat these lands as a Federal reservation for certain purposes. Finally, we note that Department regulations governing easements and conveyances of interest would not be applicable to the proposed leased land, and no Federal responsibility for management of that land would be involved.

Concerning section 4's requirement that the Secretary assure that certain conditions have been met before the settlement agreement can be finalized, we note that the bill sets no time limit for the State of Florida to satisfy these conditions.

We would suggest that the committee consider setting a limit and specifying what actions the Secretary might take if the settlement process is prolonged more than would appear to be necessary.

We also note an apparent ambiguity in section 4(1). That provision directs the Secretary to insure that the State has appropriated and paid all "settlement funds," which section 3(7) defines as, "Those amounts of money which the State of Florida has agreed to pay."

However, the settlement agreement appears to make only one reference to funds. Accordingly, if there are no other funds, we would recommend that the quoted language be changed to "that amount of money which the State of Florida has agreed to pay."

Finally, section 8 directs the Secretary to accept certain lands in trust for the benefit of the tribe. Inasmuch as this act would constitute the authority for accepting the lands in trust, rather than section 5 of the Indian Reorganization Act of 1934, to avoid possible misunderstanding in the future, section 8 should specify clearly that the lands are not to be taxable.

This concludes my statement. I shall be pleased to respond to any questions the committee might have.

Senator GORTON. I take it that those three amendments are not included in the bill as it passed the House?

Mr. FRITZ. They have not, sir.

Senator GORTON. Did you suggest them in the House, or are they something that has come up since?

Mr. BOND. As far as I know, sir, they were not suggested.

Senator GORTON. As far as you know, they were not suggested? They are here for the first time?

Mr. FRITZ. There was no hearing in the House, sir.

Senator GORTON. I see.

Mr. FRITZ. These, then, would have to be handled in report language in order to expedite it prior to the end of this year.

Senator GORTON. The thrust of your written statement seems to be that the Department of the Interior was not involved in the negotiation of the settlement between the tribe and the State of Florida; is that right?

Mr. FRITZ. That is correct.

Senator GORTON. Have you had ample time to review that agreement?

Mr. FRITZ. People from Mr. Bond's staff and also from the central office staff have had an opportunity to review the settlement.

Senator GORTON. And, are you satisfied that it is bearable for the State and the people of Florida and the Indian tribe?

Mr. FRITZ. Yes. To the best of my knowledge, fairness in this instance means that both sides have been adequately represented by competent counsel. I trust that both counsel provided adequate legal representation in this instance.

Senator GORTON. You have not made an independent evaluation as to whether you think it is good or not?

Mr. FRITZ. Not as to the equities on either side. Our solicitors' office along with our technical staff, has examined this.

The conclusion is that it is adequate to solve the litigation.

Senator GORTON. The 189,000 acres of leased land which is to be treated as an Indian reservation for certain Federal program purposes: Does that treatment imply any costs to the Federal Government in terms of Federal land management?

Mr. BOND. No, sir.

Senator GORTON. The Bureau of Indian Affairs will not have anything to say about the management of that land; is that correct?

Mr. BOND. That is correct.

Mr. FRITZ. That is right.

Senator GORTON. Section 6(d) provides that nothing in the bill will impair or otherwise diminish benefits received by the State of Florida under the act of September 2, 1937, or the act of August 9, 1950.

Why don't you explain what those acts are and what benefits the State receives?

Mr. BOND. As I understand it, Senator, that is the so-called Public Law 280.

It has to do with jurisdiction. I was just corrected on that. Those two have to do with the fish and wildlife restoration acts. These are the Pitman-Robinson and the Dingell-Johnson Acts.

Those acts provide for a Federal excise tax on sporting arms, ammunition, fishing tackle, and supplies. Taxes collected by the Treasury are turned over to the States by a formula administered by the U.S. Fish and Wildlife Service for projects dealing with fish restoration and wildlife restoration. The taxes are returned in a ratio commensurate with the sales of the taxable material in whatever State it is.

Senator GORTON. How could a bill like this have any impact on that distribution in any event?

Mr. BOND. On Indian trust lands, PR and DJ moneys are not expended.

Senator GORTON. I see.

Mr. BOND. It is specifically set up for State fish and game departments.

Senator GORTON. In this case, on 189.000 acres, it will be eligible.

Mr. BOND. That will be treated and the title remains in the name of the State of Florida. And those funds would continue to be spent there.

Senator GORTON. At the same time, the non-Indian people of Florida retain their hunting and fishing rights on that 189,000 acres?

Mr. BOND. Yes.

Senator GORTON. With that, I thank you very much. I appreciate your being here with us today.

We will now hear from Mr. Dean and Mr. Tucker, in the absence of Mr. Buffalo Tiger from the Miccosukee Tribe who is ill and unable to attend.

The staff should inform the chairman of the tribe that, if he has a statement, his statement will be included in the record.

Oh, he has already submitted one. His statement, then, will be included in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF BUFFALO TIGER, CHAIRMAN, MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

Mr. Chairman, my name is William Buffalo Tiger. I am the Chairman of the General Council of the Miccosukee Tribe of Indians of Florida, an Indian tribe recognized by the United States which has resided for centuries in the Everglades region of South Florida. I appreciate the opportunity to present the views of the Miccosukee Tribe on the Florida Indians Lands Claims Settlement Bill, in which my Tribe is vitally interested.

This bill, S. 2893, will give federal confirmation to a settlement agreement between the Tribe and the State of Florida and resolve a law suit currently pending in the Federal District Court for the Southern District of Florida. It will settle a land dispute between my Tribe and the State which has lasted for many decades.

My tribe lived in Florida long before its acquisition by the United States in 1819. We resided, hunted and fished in the Everglades area affected by S. 2893 from time immemorial. We live in this area today and, except for the establishment of the Everglades National Park, the construction of two highways, and, a few years ago, the attempt to build a jetport, our occupation of these lands and waters has not been interrupted.

However, for many years the State has claimed to own the tract of land (known as Conservation Area No. 3) in which we live north of the Park. Ever since I became tribal chairman in 1961, one of my primary goals has been the negotiation of an agreement with the State of Florida which would secure to my people and their descendants the right to continue to live in our traditional homeland in the Everglades.

In 1960 the State granted us a license to most of this area. The license meant that we could stay as long as the State did not change its mind. In 1975, however, the State Attorney General questioned the lawfulness of the license. Since 1975 we have been actively negotiating with the State to achieve the agreement which would be confirmed by S. 2893.

In January 1979 we filed suit against the State because there seemed no other way to bring the negotiations to a conclusion. In that suit we asserted all the significant legal claims which we have against the State of Florida, including a claim based on the flooding of a large part of our State Indian Reservation and a claim to a 5,000,000-acre Executive Order Reservation established by President Tyler in Southwestern Florida in 1839.

We have reached an agreement with the State on these matters which is acceptable to us and to our attorneys, Mr. Lazarus and Mr. Dean, has been approved by our General Council, and was signed by the parties to the suit on April 16, 1982.

The Agreement requires the consent of the Congress for several reasons. First, we are waiving substantial claims against the State in return for its assurance that we may continue to live in our traditional homeland. Our waiver under federal law requires Congressional consent to be binding. Secondly, we have insisted that our present State Indian reservation should be transferred to the Federal Government and held in trust as a federal Indian reservation. The State has agreed to the transfer, and S. 2893 will require federal acceptance of that particular tract as an Indian reservation. Finally, there are in S. 2893 provisions specifying that the Conservation Area 3 lands which are being leased to us by the State will be treated as a federal Indian reservation for certain limited

purposes relating solely to federal programs and benefits for the Miccosukee Indians.

Our agreement with the State expires on December 31, 1982. In order for the agreement to become final and effective, S. 2893 must become law on or before that date.

I want to emphasize to you, Mr. Chairman, that we have negotiated a settlement of very substantial claims with the State of Florida which does not require the payment of any monetary compensation by the Federal Government. The monetary compensation for our claims is to be paid by Florida and has already been appropriated by the State Legislature. We have also agreed that the public will be able to continue to use and enjoy this unique Everglades area for legitimate recreational purposes, and both the State and the Tribe have recognized the preservation of the leased area in its natural state as a purpose of the lease agreement.

In our negotiations with the State we have had the support of a broad cross section of the people of Florida, including the Florida Audubon Society and many other conservation and recreation organizations. We appreciate their support.

We also appreciate the patience and energy which the Attorney General and his staff, as well as the other State agencies involved in the suit, have devoted to resolving the many technical questions which have arisen in the negotiation of the settlement. We believe that this agreement opens the way for a new and constructive relationship between the Miccosukee Indian people and the State of Florida. We have agreed to share this Everglades area with the non-Indian people who hunt and fish there. This idea of sharing the land is a very important part of our Miccosukee outlook on life. We are especially proud that in this respect the settlement agreement reflects our own Miccosukee attitude about shoring and that the State of Florida has joined with us in developing a solution to this land problem which demonstrates the Miccosukee people's own philosophy in the use of land.

We feel that we and the State have set an example which demonstrates the ability of people of good will to bridge differences in language, culture and outlook, as well as a past history of bitterness and discord, and move toward a new relationship of trust and fair play. Of course, we have not, in this Settlement Agreement, found an answer to all our needs as we move into the future. We must continue to work toward improvements in education, health, housing and similar matters. But with this settlement we have achieved for the first time in this century an agreement which legally protects our right to continue to live in our homeland.

As Chairman of the Miccosukee Tribe, I request that Congressional confirmation of the settlement agreement be granted before the end of this session of the Congress.

Thank you.

Senator GORTON. I also note that I have a statement here from Senator Chiles from the State of Florida. That will be included in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, I want to thank you and the members of the Select Committee on Indian Affairs for giving me this opportunity to speak on behalf of the Miccosukee Indians of Florida and the State of Florida. I also want to extend my appreciation to the staff of this committee for their cooperation in putting this hearing together.

S. 2893, the bill Senator Hawkins and I introduced, is to settle certain Indian land claims within the State of Florida. Like most bills, this legislation is the end-product of considerable work and effort by the affected parties. The Miccosukee land claims involve over 20 years of negotiation and over 150 years of history. The Miccosukee Tribe are descendants of the Seminole Nation which occupied all of Florida when the United States acquired it from Spain in 1819.

Relations between the Miccosukee and the United States began formally with a treaty in 1823. Those relations deteriorated when the Armed Forces of the United States drove the Miccosukee Indians from their home in northern-

central Florida to the Everglades country of south Florida where they now live. Many years later, Presidents Tyler and Polk established a 5-million acre Indian reservation by executive order in southwest Florida, which now includes the cities of Naples and Fort Myers. Until the 20th century, the Indians were left undisturbed in the unsettled Everglades almost entirely unaffected by the white man. The State of Florida set aside a portion of the Everglades as a reservation for them in 1917. The State reservation, however, was abolished in 1935 to make way for the Everglades National Park. Another State reservation was provided but the Miccosukees understandably did not want to leave their traditional homeland.

They did not leave, and in 1964 the National Park Service agreed to let them live in a strip 500 feet wide at the northern edge of the park and the State agreed to let them live temporarily on State-owned lands north of the park. These State lands are involved in the present settlement. Since before 1960 the tribe has negotiated with the State of Florida for the right to permanently occupy State lands. A settlement agreeable to both the tribe and the State was reached in 1978 but the Governor asked the Miccosukees to waive any legal claims they had against the State of Florida. The Miccosukees discovered that the executive order issued by Presidents Tyler and Polk gave them a land claim. They also had a claim based on the flooding of more than half of the State Miccosukee Reservation without the permission of the tribe. Further negotiations took place and a final settlement was approved by the Governor and the cabinet of the State of Florida on October 6, 1981, by the Miccosukee Tribe on March 8, 1982, and was approved by the U.S. District Court for the Southern District of Florida in which the suit by the tribe is pending, on July 2, 1982.

The Florida Indian Land Claims Settlement Act authorizes no Federal expenditure in settlement of the tribe's claims. The monetary compensation to be paid to the tribe under the terms of the settlement will be paid entirely by the State. Nevertheless, Federal approval of the settlement as provided in the bill is necessary for three reasons:

One, in the settlement agreement the Miccosukee Tribe waives all its existing claims against the State. In view of the existing Federal legislation which prohibits conveyances of land by Indian tribes without Federal approval (25 U.S.C. S177), the State has wisely insisted that the tribe's waiver of claims should be confirmed by the Congress.

Two, the Miccosukee Tribe requested as a condition to the settlement that an existing Miccosukee State Indian Reservation be conveyed by the State to the Federal Government to be held in trust for the benefit of the Miccosukees. The Florida cabinet has approved this conveyance and the bill provides for the acceptance of these lands by the Secretary of the Interior as a Federal Indian reservation.

Three, finally, the settlement agreement provides to the tribe approximately 189,000 acres of Everglades land under a perpetual lease. These lands and waters will be preserved in their natural state and will be available for public recreational use but the Miccosukee Indians will be guaranteed permanent rights to live, hunt, and fish in the area, which has been their traditional homeland for more than a century. While the legal title to the leased area will be held by the State, the State has agreed that the area may be treated for certain purposes as a Federal Indian reservation. The bill implements this agreement of the parties.

The terms of this agreement will terminate unless congressional approval is given by December 31, 1982.

I want to congratulate the State of Florida and the Miccosukee Indian Tribe for reaching this settlement after so many years of negotiation. I also compliment them for settling this matter without burden on the Federal Government or its budget. The State of Florida has recognized its obligation to the Miccosukee Indians, the Miccosukee tribal leaders have recognized their obligation to their people, and I hope the Congress will feel the same sense of obligation to finalize this settlement to provide a permanent home for the Miccosukee Indians.

Again, I thank the committee for scheduling this hearing to hopefully enable us to pass this legislation in the Senate and send this bill to the President for his signature before the end of this year.

Senator GORTON. Please proceed, Mr. Dean.

STATEMENT OF S. BOBO DEAN, ATTORNEY FOR THE MICCOSUKEE TRIBE OF INDIANS OF THE STATE OF FLORIDA

Mr. DEAN. Thank you, Mr. Chairman.

I am Bobo Dean, one of the attorneys for the Miccosukee Tribe.

I want to express Mr. Tiger's regrets that he is not able to come up from Florida today for the hearing. He had planned to be here. We appreciate the inclusion of his written statement in the record.

I would like to make only one very brief statement which, basically, is to highlight a point that Mr. Tiger makes in his written statement which has been filed.

This settlement is the result of years of negotiations between the Miccosukee Tribe and the State of Florida. In one form or another, the negotiations over the 189,000-acre tract which has been leased to the tribe has occupied almost all of Mr. Tiger's adult life, since the 1950's.

There were active negotiations in the late 1950's from the time of Mr. Tiger's election as chairman of the tribe in 1961 until 1982. This has been a primary goal of the Miccosukee Indians because this 189,000 acres is land on which they have traditionally lived and in which they have hunted and fished for the past two centuries.

Mr. Tiger says in his statement:

> We have agreed to share this Everglades area with the non-Indian people who hunt and fish there. This idea of sharing the land is a very important part of our Miccosukee outlook on life. We are especially proud that, in this respect, the settlement agreement reflects our own Miccosukee attitude about sharing and that the State of Florida has joined with us in developing a solution to this land problem which demonstrates the Miccosukee people's own philosophy in the use of land.

I would be happy to answer any questions, Mr. Chairman that you might have. This concludes my testimony.

Senator GORTON. We will do that later, I think. We will hear from Mr. Tucker first, if he has any statement, before we go on with the questions.

STATEMENT OF KEN TUCKER, DEPUTY ATTORNEY GENERAL, STATE OF FLORIDA

Mr. TUCKER. I am Ken Tucker from the attorney general's office of the State of Florida. I am here on behalf of the State of Florida.

We, too, appreciate the opportunity to be heard and particularly the hearing being scheduled on such short notice.

The State views this bill as a matter of some urgency because our State legislature has appropriated about $1 million to be paid to the tribe. This appropriation was made about 1½ years ago. Under our State law, it expires and reverts back to our general revenue fund at the end of this month. This means that, if we do not make it through this session of Congress, we have to go back to our legislature next year. We are facing, like a number of States, very, very severe budget cuts.

Senator GORTON. I am not sure you would get your $1 million back. [Laughter.]

Mr. TUCKER. Any member of the legislature would probably love to get their hands back on that appropriation. So, we hope that we can get action this session. Anything that this committee could do would be appreciated.

From the point of view of the State, the settlement is very important because it extinguishes Miccosukee claims against the State of Florida for flooding a portion of the State Miccosukee Indian Reservation for purposes of flood control and water storage projects.

These flood control and water storage projects are essential to insure sufficient and clean drinking water for the citizens of South Florida.

The settlement brings to a conclusion any claims by the tribe concerning the validity of this vital project. It also quiets title in favor of the State of Florida or private persons of any claims the tribe may have to lands in Florida, except for lands specifically excepted in the settlement agreement.

Mr. Dean referred to the 189,000 acres. That land was used by the Miccosukees under oral agreements by the State.

This settlement agreement upgrades the oral license to a lease agreement which continues the traditional tribal uses of the land and guarantees that they will be continued in perpetuity. The State cannot renege on that unless it condemns that interest by payment of adequate compensation.

The public shares rights with the Miccosukees to those lands, including hunting and fishing and hiking and so forth. The State of Florida retains title to those lands.

Thank you.

Senator GORTON. Thank you very much. I am informed we also have a written statement by Senator Hawkins.

This statement, without objection, will be made a part of the record at this point.

[The statement follows:]

PREPARED STATEMENT OF PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Good afternoon. I am grateful for the opportunity to testify in support of the Florida Land Claims Settlement Act. I want to thank Senator Gorton for scheduling these hearings during a very busy and hectic period.

As you know, S. 2893 represents the culmination of over seven years of negotiations to resolve the land dispute between the Miccosukee Tribe of Indians and the State of Florida. This bill reflects a successful compromise by all the parties involved. It is fair not only to the tribe in particular but to all citizens of Florida.

The legislation ratifies the settlement of the land claim filed by the Miccosukee Tribe against the State of Florida. The carefully constructed settlement includes a lease agreement that provides 189,000 acres for the permanent use of the Miccosukee people. S. 2893 instructs the Secretary of the Interior to take the Florida State Indian Reservation into the federal trust and to provide services to the tribe in the leased area. Taken together, the new federal reservation and the leased land provide the Miccosukee Tribe with their first permanent and legally recognized home. Before this time the Miccosukee have lived on a small strip of land only 500 yards wide in Everglades National Park. The need for a just settlement of this Indian land claim is my reason for supporting this legislation. The bill is very important to the State of Florida, and I am pleased that S. 2893 allows the tribe to protect its traditional lifestyle while insuring South Florida's water supply and protecting the fragile Everglades.

In addition to the guarantee of land, the State of Florida will pay the Miccosukee Tribe $975,000 in remuneration for land included in this agreement that

has been and will continue to be flooded on occasion to control water levels. In return for this payment and for the exchange of land, the Tribe will extinguish any existing claims and waive any rights to additional land in Florida.

I am sure that each of us is familiar with the unhappy story of the Florida Indians and their experience in the last century. Through military conquest the Miccosukee Indians were forced to leave their traditional home in north central Florida and learn to survive deep in the Everglades. Once there, the Miccosukee developed a distinctive lifestyle and culture. Again, during the 20th century, the tribe found itself uncertain about its claim to Florida land. The Everglades National Park was established and the State reclaimed land it had set aside as an Indian Reservation. This settlement agreement, ratified by S. 2893, will bring justice to the Tribe.

This legislation addresses not only the past but also the future. Under the terms of the lease agreement being ratified, over 200,000 acres of Florida Everglades will be protected for all time. Both the State and the Miccosukee have made clear their desire to preserve the wild beauty of this area. The primary use of these lands will be limited to the Tribe's traditional activities of hunting, frogging, and fishing. Under the terms of the agreement, private individuals will continue to have access for hunting and fishing and the South Florida Water Management District will maintain authority for flood control. The only exception to these environmental provisions is that the State may continue its planned expansion of Alligator Alley, the major highway connecting the east and west coast of South Florida. Consistent with the Administration's goal of greater self-sufficiency for Indian Tribes, the Miccosukee will share in the economic benefits the highway will bring. The tribe will have access to the highway and may develop adjoining land.

I want to stress one additional important provision within S. 2893. The tribe has agreed to abide by Florida law affecting the sale and distribution of alcohol and tobacco and the operation of gambling establishments. It is the intention of S. 2893 that the State retain its civil and criminal authority over these activities. I fully believe that these provisions should be retained.

In the final analysis, this settlement and this legislation mark a new era of cooperation between the Miccosukee Tribe, the State of Florida, and the federal government. It puts an end to over a hundred years of discord and builds, literally, a common ground for the future. It is ironic that the very thing that divided Florida's Indians from its early settlers has now brought them together. Now, they share a common interest in, and an appreciation of the importance of, the land and water of Florida and the need to preserve the Everglades environment. Swift action by the Committee and enactment by the Senate will ensure that the spirit of cooperation in this agreement will continue to grow.

Senator GORTON. Do either or both of you have copies of the written agreement between the tribe and the State of Florida?

If you do, we would appreciate it if you would submit it to us.

Mr. TUCKER. Yes, sir.

Senator GORTON. We will then make that written agreement part of the record at this point.

[The material follows. Oral testimony resumes on p. 139.]

IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF FLORIDA, MIAMI DIVISION

CASE NO. 79-253-Civ-JWK

MICCOSUKEE TRIBE OF INDIANS
OF FLORIDA,

Plaintiff,

vs.

STATE OF FLORIDA, et al.,

Defendants.

_____/

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED between the parties that the above-entitled case shall be finally settled in accordance with the terms of this Settlement Agreement (hereafter referred to as the "Agreement") and upon its approval by the Court. No appeal or review is to be sought by any of the parties. For the purpose of this Agreement, the parties shall be named and defined as follows:

Plaintiff, the Miccosukee Tribe of Indians of Florida (hereafter referred to as the "Miccosukee Tribe") is recognized by the State of Florida, pursuant to Chapter 285, Florida Statutes, and is an Indian tribe recognized by the United States and organized under the Indian Reorganization Act of 1934, 25 U.S.C. §476, with a constitution and bylaws approved by the Secretary of the Interior pursuant to that Act. The Miccosukee Tribe approves this Agreement through its duly recognized and authorized Tribal Council, and its approval of this Agreement will bind the Miccosukee Tribe and any predecessor or successor in interest and all members thereof.

Defendants, the State of Florida, its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions, and the South Florida Water Management District will be referred to hereafter in the Agreement as the "State of Florida," unless the language of this Agreement otherwise refers to a specific agency, official, or entity of the State of Florida. The State of Florida approves this Agreement through the Governor and Cabinet as the Executive Board of the Trustees of the Internal Improvement Trust Fund and as head of the Department of Natural Resources, the members of the Game and Fresh Water Fish Commission, the governing board of the South Florida Water Management District, and the Secretary of the Department of Transportation, and its approval shall bind the State of Florida and its above mentioned agencies.

The term "lands or natural resources", as used in this Agreement, shall mean any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

W I T N E S S E T H:

WHEREAS, the parties recognize that a settlement of this litigation could not have been reached unless the Agreement included an extinguishment of any and all outstanding or potential claims the Miccosukee Tribe might have against the State of Florida, which may have arisen at any time prior to the effective date of this Agreement; and

WHEREAS, the parties also recognize that a settlement of this litigation could not have been reached unless the Agreement included a grant of a leasehold interest in certain lands to the Miccosukee Tribe; and

WHEREAS, the parties further recognize that implementation of this settlement will require action by both the Congress of the United States and the Legislature of the State of Florida; and

WHEREAS, it is the intent of this Agreement to resolve all outstanding disputes and differences between the State of Florida and the Miccosukee Tribe, and, in particular, to extinguish all claims presently in existence or arising out of any previous actions, inactions, or duties of the State of Florida, as well as to satisfy the need of the Miccosukee Tribe for additional lands, so that the future relations between the State of Florida, its citizens and the Miccosukee Tribe will be one of harmony, cooperation, friendship and peace.

NOW THEREFORE, THE MICCOSUKEE TRIBE AND THE STATE OF FLORIDA STIPULATE AND AGREE AS FOLLOWS:

1. Effective Date. This Agreement shall not become final and shall be without any binding force or effect until:

a. The United States Congress enacts appropriate legislation, which: (1) approves the conveyances to be made or recognized by the Miccosukee Tribe pursuant to this Agreement; (2) provides for the extinguishment of the claims of the Miccosukee Tribe to lands or natural resources in Florida, as specified in this Agreement; (3) declares that the leasehold interest of the Miccosukee Tribe under the Lease Agreement attached hereto as Exhibit A shall be exempt from all State and local taxes; (4) confirms that the area leased to the Miccosukee Tribe pursuant to said Lease Agreement (hereafter referred to as the "Leased Area") shall qualify as if it were an Indian reservation solely for purposes of determining the eligibility of the Miccosukee Tribe and its members for any Federal health, education, employment, economic assistance, revenue-sharing, law enforcement over Indians, or social welfare programs, or any

other similar Federal program for which Indians are eligible because of their status as Indians and residence on an Indian reservation; and (5) provides that any diminution or taking by the State of Florida of any interest granted to the Miccosukee Tribe in the Leased Area shall be made only for a public purpose and upon payment of just compensation, and that such diminution or taking shall not require approval of the United States Congress or Federal executive officer; and

b. The State of Florida enacts appropriate legislation, which provides: (1) that the Miccosukee Tribe shall have the right to exercise within the Leased Area the same governmental jurisdiction over Indians that the Miccosukee Tribe exercises in its reservation established under the provisions of Chapter 285, Florida Statutes; Provided, however, that such jurisdiction shall not be exercised in any manner inconsistent with the limitations upon the Miccosukee Tribe's rights under the Lease Agreement; and (2) that during the term of the Lease Agreement, members of the Miccosukee Tribe shall have the right in such Leased Area and such reservation to hunt and fish for subsistence purposes and to take frogs for consumption as food and for commercial purposes without restriction as to season and without payment of any license or permit fees; Provided, however, such laws may restrict the exercise of such hunting, fishing and frogging rights in the Leased Area in order to manage game and wildlife so long as prior to placing restrictions upon subsistence hunting, fishing and frogging, the Game and Fresh Water Fish Commission shall totally restrict any taking of that particular species for non-subsistence purposes.

This Agreement shall become effective upon the effective date of the above-described Federal legislation, the effective date of the above-described State legislation, or the date of its approval by the Court, whichever last occurs.

2. Cooperation of Parties. The parties agree to cooperate fully in requesting and supporting passage by the United States Congress and the Florida Legislature of the statutes described in paragraph 1. Drafts of such legislation, which reflect the understanding and agreement of the parties, are attached hereto as Exhibits B and C, respectively. The parties agree that failure by the United States Congress to enact the first sentence in Section 8 of the attached Federal legislation (Exhibit B) shall not void the Settlement Agreement.

The parties also agree that further proceedings in this suit shall be stayed while such legislation is pending; Provided, however, that this stay shall terminate on December 31, 1982, or earlier if the Court determines that favorable action by either Congress or the Legislature within a reasonable time does not seem likely.

3. Commitments of the Miccosukee Tribe. The Miccosukee Tribe agrees:

a. That the South Florida Water Management District shall be entitled to exercise all rights conveyed by the Dedication from the Board of Commissioners of State Institutions of the State of Florida on August 8, 1950, and the validity of such Dedication is hereby expressly recognized by the parties hereto;

b. That the Department of Transportation shall be entitled to exercise all rights conveyed by the Board of Trustees of the Internal Improvement Trust Fund to the Department of Transportation of Florida (or between their predecessor agencies) for a perpetual easement for road right-of-way and utility purposes over that strip of land, consisting of approximately 461.17 acres, which passes through the Miccosukee Reservation, and which is within the lands described in the Alligator Alley (State Road 84) easements, recorded in 1964, as more specifically

described in Exhibit D attached hereto. It is agreed, that reasonable access shall be provided the Miccosukee Tribe and its members from Alligator Alley into the Miccosukee Reservation and also across or under Alligator Alley for the purpose of connecting the portions of said reservation lying north and south of the highway; Provided, however, the Miccosukee Tribe agrees to approve conveyances of additional lands necessary for the construction of said access and connections as well as the grant of an easement along the highway for drainage purposes within said reservation, without additional monetary compensation. In exchange for the conveyances of right-of-way and easement, the Department of Transportation agrees that simultaneously with the construction of the proposed access interchange within the Miccosukee Reservation the Department of Transporation will fill and compact an area of not less than five (5) acres at a location specified by the Tribe and acceptable to the Department, which acceptance shall not unreasonably be withheld, to an elevation of not less than seventeen (17) feet above sea level, which land shall be adjacent to and accessible from the interchange and suitable for commercial development for the use and benefit of the Tribe; Provided, however, that nothing herein shall constitute Federal, State, or local approval of such development, and further provided that the provisions of this paragraph relating to access to the Miccosukee Reservation, conveyances of additional lands and easements, and the providing of five (5) acres of fast land shall be contingent upon the completion of Alligator Alley as part of the Interstate system or other four (4) lane limited access highway. In the event that Alligator Alley is not completed, or substantially completed, as part of the Interstate system or other four (4) lane limited access highway within the Miccosukee Reservation within two (2) years after the effective date of this Agreement, the Tribe shall be

entitled to construct, operate and maintain commercial facilities and related improvements wholly or partially within the easement for a road right-of-way decribed in Exhibit D, and in case such facilities and related improvements are constructed and their removal should become necessary in order to permit the completion of Alligator Alley as part of the Interstate or other highway system, the Department of Transportation agrees to pay to the Tribe at least six (6) months before such removal an amount equal to either (1) the replacement cost of the facilities and related improvements without depreciation, or (2) if relocation of the facilities and related improvements can be effected, the relocation cost together with damages for the loss of business, if any, during the relocation period, whichever is less;

c. To the extinguishment of any right, title, interest, or claim the Miccosukee Tribe may now possess in any public or private lands or natural resources in Florida, excluding hunting, fishing and trapping rights conferred by State law, and other than certain "excepted interests" consisting of: (1) the State Reservation established under the provisions of Chapter 285, Florida Statutes; (2) the lands described in Dedication Deed No. 23228, dated November 20, 1962, from the Trustees of the Internal Improvement Fund of the State of Florida, as modified on October 6, 1981; (3) rights granted the Miccosukee Tribe by special use permits issued by the Secretary of the Interior in the Everglades National Park; (4) rights recognized in the Miccosukee Tribe in the Big Cypress Preserve pursuant to 16 U.S.C. §§410(b) and 689(j) and in the Big Cypress Area pursuant to Section 380.055, Florida Statutes; and (5) rights granted the Miccosukee Tribe under the Lease Agreement. The Miccosukee Tribe also agrees to the extinguishment of any and all claims which the Miccosukee Tribe may have other than the foregoing "excepted interests" involving lands or natural

resources in the State of Florida arising at any time prior to the effective date of this Agreement; Provided, however, that nothing in this Agreement or otherwise shall be construed, as waiving or relinquishing any right, title, interest, or claim to lands or natural resources in the State of Florida based on use and occupancy or acquired under Federal or State law by any individual member of the Miccosukee Tribe or any predecessor in interest thereof. The rights, titles, interests and claims outside the "excepted interests" which are being extinguished or waived by the Miccosukee Tribe, include:

(i) any and all claims the Miccosukee Tribe might have to any public or private lands or natural resources in Florida which are based upon claims of aboriginal title;

(ii) any and all other claims the Miccosukee Tribe might have to any public or private lands or natural resources in Florida, such as claims or rights based on recognized title, including but not limited to: (1) any claims the Miccosukee Tribe might have to the whole or any part of the approximately five million (5,000,000) acres of lands allegedly set aside in Florida for use and benefit of the Seminole Indian Nation, including the Miccosukee Tribe, during the period 1839 - 1845, or at any other date, by Executive Order of the United States Government commonly known as the "Macomb" or "Polk" Reservation Area; (2) any claim based upon the grant and withdrawal of title to the State Indian Reservation in Monroe County, specifically returned to the State of Florida by Section 285.06, Florida Statutes; and (3) any claim based upon the alleged grant of a license to Seminole Indians residing in Florida by the Board of Commissioners of State Institutions on April 5, 1960;

d. To the extinguishment of any and all other claims, without regard to the "excepted interests" specified above in paragraph 3c, related to the following matters:

(i) any and all claims arising out of any alleged breach of fiduciary relationship between the Miccosukee Tribe and the State of Florida, acting in a capacity as Trustee for the Miccosukee Tribe, arising out of any actions or inactions by the State of Florida prior to the date this Agreement is executed by the parties;

(ii) any and all claims for trespass damages or use and occupancy of any lands or natural resources in the State of Florida occurring prior to the date this Agreement is executed by the parties, including but not limited to claims for compensation for any road right-of-way and toll collections for State Road 84, also known as Alligator Alley. The Miccosukee Tribe also agrees to waive any and all claims arising between the execution and the effective date of this Agreement for trespass or use and occupancy of any lands or natural resources, including claims for compensation or collection of tolls, within any road or utility right-of-way or easement in existence at the date this Agreement is executed;

(iii) any and all other claims against the State of Florida, especially the South Florida Water Management District, or its predecessor, the Central and Southern Florida Flood Control District, arising out of any actions or inactions by the State of Florida in regulating the use, flow, management, or storage of water, including the construction of canals and levees, at any time prior to the date this Agreement is executed by the parties. The Miccosukee Tribe also agrees to waive any and all claims arising between the execution and effective date of this Agreement for the regulation, management and use of the water flowage and storage easements of the South Florida Water Management District, pursuant to its lawful rights and authority within the easement as expressly recognized by the Miccosukee Tribe in paragraph 3a;

(iv) any and all other claims by the Miccosukee Tribe against the State of Florida related to any of the matters listed in this paragraph 3d and in paragraphs 3c(i) and (ii) or arising out of any actions or inactions whatsoever by the State of Florida, including but not limited to tort, tax, contract, or constitutional claims prior to the date this Agreement is executed by the parties.

4. Commitments of the State of Florida. The State of Florida agrees:

a. To grant the Miccosukee Tribe a perpetual leasehold interest in certain lands under the control of the State of Florida, as provided in the Lease Agreement attached hereto as Exhibit A;

b. To pay the Miccosukee Tribe the sum of nine hundred seventy-five thousand dollars ($975,000);

c. To carry out its commitments under paragraph 3b; and

d. To waive any and all claims for offsets, including but not limited to tort or contract claims, which were or could have been asserted against the Miccosukee Tribe by the Department of Transportation, the South Florida Water Management District, or the Trustees of the Internal Improvement Trust Fund prior to the date this Agreement is executed by the parties.

5. Condition for Invalidating Settlement. The parties understand and agree that the grant to the Miccosukee Tribe of the Lease Agreement attached hereto as Exhibit A is a vital element of the settlement for the Miccosukee Tribe. This Agreement, therefore, shall no longer have any binding force and effect if, at any time, the Lease Agreement or any essential provision thereof which materially benefits the Miccosukee Tribe is judicially determined to be void ab initio by a court of competent jurisdiction or is administratively determined to be

void or otherwise invalid by any officer of the State of Florida having authority to make that determination. In either of such events, the Miccosukee Tribe shall have the right to reinstate this litigation within a reasonable time -- which period shall be defined for purposes of this Agreement as six (6) months after the Miccosukee Tribe receives written notice of such determination -- and, if the suit is reinstated within that time, the parties agree that no defense, such as laches, statute of limitations, law of the case, res judicata, or prior disposition shall be asserted solely on the basis of the passage of time between the dismissal of this suit and commencement of the resumed litigation; Provided, however, that if any such suit is reinstated, the Miccosukee Tribe agrees that any defense which would have been available to the State of Florida at the time this suit was dismissed may be asserted, and is not waived by anything in this Agreement or by subsequent events occurring between the dismissal of this suit and commencement of the resumed litigation. Any taking by the State of Florida for a public purpose of interests granted to the Miccosukee Tribe in the Lease Agreement shall not be construed as voiding this Agreement.

If the Miccosukee Tribe reinstitutes suit, the State of Florida shall be able to offset or counterclaim for all compensation and the value of other benefits received by the Tribe under the Settlement and Lease Agreements and the Miccosukee Tribe shall be able to offset or counterclaim for all benefits received by the State. As an alternative to rescission and the

reinstitution of litigation pursuant to this paragraph 5, the Miccosukee Tribe shall have whatever remedies are provided by law.

DONE AND EXECUTED this 16 day of April, 1982.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

Governor

Secretary of State

Attorney General

Comptroller

Treasurer

Commissioner of Agriculture

Commissioner of Education

FLORIDA GAME AND FRESH WATER FISH COMMISSION

By: Chairman of the Commission

16-864 O - 83 - 8

Legal Form Approved
SFWMD Office of Counsel
Date 3/15/93

Attest:
Thomas E. Huser
Assistant Secretary
S.F.W.M.D.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Chairman, Governing Board

STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES

By: _____
Executive Director

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____
Secretary

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

By: _____
Chairman

_____
Secretary

EXHIBIT A

LEASE AGREEMENT

WHEREAS, The Governor and Cabinet as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereafter the "Board") are authorized and empowered, pursuant to Section 253.03, Florida Statutes, to lease lands owned by the Board; and

WHEREAS, the Florida Game and Fresh Water Fish Commission (hereinafter the "Commission") under the Constitution and laws of the State of Florida has general supervision of fresh water aquatic life and wild animal life management within the State of Florida; and

WHEREAS, pursuant to Chapter 373, Florida Statutes, the South Florida Water Management District (hereafter the "SFWMD"), formerly the Central and Southern Florida Flood Control District, has the statutory responsibility for flood control and water resources management in the lands described in paragraph 1 hereof and has acquired rights by virtue of easements on said lands from the State of Florida; and is authorized and empowered to lease lands owned by the SFWMD; and

WHEREAS, pursuant to a certain Agreement, dated January 18, 1952, between the Commission and the Governing Board of the SFWMD, the Commission has further undertaken the fresh water aquatic life, wild animal life and recreation management within geographical areas including Water Conservation Area 3A lying in Broward and Dade Counties, Florida; and

WHEREAS, the Miccosukee Tribe of Indians of Florida (hereafter the "Miccosukee Tribe" or the "Tribe") is an American Indian tribe recognized by the United States, and the State of Florida pursuant to Chapter 285, Florida Statutes, and organized

pursuant to the provisions of Section 16 of the Federal Indian Reorganization Act, 25 U.S.C. §476; and

WHEREAS, a portion of the reservation of the Miccosukee Tribe created under Chapter 285, Florida Statutes, lies within the geographical boundaries of Water Conservation Area 3A, which portion contains approximately 49,280 acres and is delineated in red on the map attached hereto as Exhibit 1 (such portion being hereafter described as the "Original Reservation Tract"); and

WHEREAS, the Commission has for a substantial period of time engaged in fresh water aquatic life and wildlife management within the Original Reservation Tract and relations between the Commission and the Miccosukee Tribe with respect to fresh water aquatic life and wild animal life management within such tract have been both amicable and successful; and

WHEREAS, the Board of Commissioners of State Institutions, on April 5, 1960, purported to set aside approximately 143,000 acres in Dade and Broward Counties as a license area for the use, occupancy and enjoyment of the Seminole Indians residing in Florida, including members of the Miccosukee Tribe, subject to certain conditions and limitations; and

WHEREAS, the Attorney General of the State of Florida has advised the Board that certain aspects of the action taken on April 5, 1960, described above need clarification due to incomplete documentation thereof and that the respective rights of the State and the Indians in the license area should be more precisely defined in the interest of both parties; and

WHEREAS, the Board, the Commission, the SFWMD and the Miccosukee Tribe desire to describe more particularly their mutual rights and duties within a tract of lands in Dade and Broward Counties, as further described in paragraph 1 (hereafter the "Leased Area"), and, in part, also within the Original Reservation Tract, and to act cooperatively to protect, conserve

and manage fresh water aquatic life and wildlife and manage and control recreational resources within the Original Reservation Tract and the Leased Area; and

WHEREAS, the Board, the Commission, the SFWMD and the Miccosukee Tribe further desire to continue and expand these cooperative efforts in the future; and

WHEREAS, the parties intend to preserve the integrity of the State School Fund of Florida, recognizing that portions of the foregoing properties are "Section 16 Lands" whose income and principal shall be used only in accordance with Article IX, Section 6, Florida Constitution; and

WHEREAS, the Miccosukee Tribe has requested assurance that its rights shall not be subject to unilateral revocation by the State so that members of the Tribe and their descendants may be assured of the continued use of their traditional homeland; and

WHEREAS, the SFWMD and the Board have agreed to lease the Leased Area to the Miccosukee Tribe for the uses and benefits established by this Agreement, and in settlement, inter alia, of claims asserted by the Tribe in Miccosukee Tribe of Indians of Florida v. State of Florida, et al., Case No. 79-253-Civ-JWK in the United States District Court for the Southern District of Florida; and

WHEREAS, the following agencies have title to all or part of the lands described in paragraph 1 or such lands are under their jurisdiction, management and control:

(i) The South Florida Water Management District, and

(ii) The Trustees of the Internal Improvement Trust Fund of the State of Florida;

WHEREAS, the Miccosukee Tribe has agreed to accept the terms and conditions of this Agreement by executing same.

NOW, THEREFORE, in consideration of their mutual promises and for other good and valuable consideration, the PARTIES HERETO AGREE:

1. The Board, with the concurrence of the SFWMD, and the SFWMD grant to the Miccosukee Tribe a perpetual lease of the following described lands constituting the Leased Area as depicted on Exhibit 1 for the uses and purposes hereafter stated:

All those lands lying within the following described area:

BEGIN at the intersection of the Westerly right of way line of South Florida Water Management District's Levee 67A (Drawing Number L-67A-1) and the Northerly right of way line of South Florida Water Management District's Levee 29 Section 2 (Drawing Number L-29-1);
Thence, Westerly along the Northerly right of way line of said Levee 29 Section 2 and Northwesterly along the Northerly right of way line of South Florida Water Management District's Levee 29 Section 1 (Drawing Number L-29-3) to the intersection thereof with the Easterly right of way line of South Florida Water Management District's Levee 28 (Drawing Number L-28-1);
Thence, Northerly along said right of way line to the intersection thereof with the North line of Section 29, Township 53 South, Range 35 East;
Thence, Easterly along the North line of said Section 29 to the Northwest (NW) corner of Section 28, Township 53 South, Range 35 East;
Thence, Southerly along the West line of Sections 28 and 33, Township 53 South, Range 35 East to the Southwest (SW) corner of said Section 33;
Thence, Easterly along the South line of Sections 33, 34, 35, and 36, Township 53 South, Range 35 East to the Southeast (SE) corner of said Section 36;
Thence, Northerly along the East line of Sections 36, 25, 24, 13, 12 and 1, Township 53 South, Range 35 East, and the East line of Sections 36 and 25, Township 52 South, Range 35 East to the Northeast (NE) corner of said Section 25;
Thence, Westerly along the North line of Sections 25, 26, 27 and 28, Township 52 South, Range 35 East to the intersection thereof with the East right of way line of South Florida Water Management District's Levee 28 (Drawing Number L-28-1);
Thence, Northerly along said right of way line to the intersection thereof with the Dade/Broward County line; said line also being the township line between Townships 51 South and 52 South and the Southerly boundary line of the Miccosukee Indian Reservation;
Thence, Easterly along said county line to the Southwest (SW) corner of Township 51 South, Range 36 East;
Thence, Northerly along the range line between Ranges 35 East and 36 East to the intersection thereof with the Southerly right of way line of State Road 838 (Alligator Alley or Everglades Parkway);
Thence, Easterly along said right of way line to the intersection thereof with a line that is 200

feet Westerly of, parallel and as measured at right angles to the centerline of South Florida Water Management District's Canal 123;
Thence, Southeasterly along said line to the intersection thereof with the North line of Section 3, Township 50 South, Range 37 East;
Thence, Westerly along the North line of Sections 3, 4 and 5, Township 50 South, Range 37 East to the Northwest (NW) corner of said Section 5;
Thence, Southerly along the West line of said Section 5 to the Southwest (SW) corner of said Section 5;
Thence, Easterly along the South line of said Section 5 to the Northwest (NW) corner of Section 9, Township 50 South, Range 37 East;
Thence, Southerly along the West line of said Section 9 to the Southwest (SW) corner of said Section 9;
Thence, Easterly along the South line of said Section 9 to the Northwest (NW) corner of Section 15, Township 50 South, Range 37 East;
Thence, Southerly along the West line of said Section 15 to the Southwest (SW) corner of said Section 15;
Thence, Easterly along the South line of said Section 15 to the Northwest (NW) corner of Section 23, Township 50 South, Range 37 East;
Thence, Southerly along the West line of said Section 23 to the Southwest (SW) corner of said Section 23;
Thence, Easterly along the South line of said Section 23 to the Northwest (NW) corner of Section 25, Township 50 South, Range 37 East;
Thence, South along the West line of Sections 25 and 36, Township 50 South, Range 37 East to the Southwest (SW) corner of said Section 36;
Thence, Easterly along the South line of said Section 36 to the Southeast (SE) corner of said Section 36;
Thence, Northerly along the East line of Sections 36 and 25, Township 50 South, Range 37 East to the intersection thereof with the North line of the South one-half (S 1/2) of Section 30, Township 50 South, Range 38 East;
Thence, Easterly along said line to the intersection thereof with a line that is 200 feet Westerly of, parallel and as measured at right angles to the centerline of Miami Canal;
Thence, Southeasterly along said line to the intersection thereof with the North line of the South one-half (S 1/2) of Section 10, Township 51 South, Range 38 East;
Thence, Westerly along the North line of the South one-half (S 1/2) of Sections 10, 9, 8 and 7, Township 51 South, Range 38 East to the Northwest (NW) corner of the South one-half (S 1/2) of said Section 7;
Thence, Southerly along the West line of Sections 7, 18, 19 and 30, Township 51 South, Range 38 East to the Southwest (SW) corner of the North one-half (N 1/2) of said Section 30; Thence, Easterly along the South line of the North one-half (N 1/2) of Sections 30, 29 and 28, Township 51 South, Range 38

East to the intersection thereof with the Northwesterly right of way line of said Levee 67A;
Thence, Southwesterly along said right of way line to the intersection thereof with the North line of Section 24, Township 52 South, Range 37 East;
Thence, Westerly along the North line of Sections 24, 23, 22, 21, 20 and 19, Township 52 South, Range 37 East to the Northwest (NW) corner of said Section 19;
Thence, Southerly along the West line of Sections 19, 30 and 31, Township 52 South, Range 37 East to the Southwest (SW) corner of said Section 31;
Thence, Easterly along the South line of Sections 31, 32, 33 and 34, Township 52 South, Range 37 East to the intersection thereof with the Northwesterly right of way line of said Levee 67A;
Thence, Southwesterly and Southerly along said right of way line to the
POINT OF BEGINNING:

Also, the following described parcels of land:
The West one-half of the Southwest one-quarter (W 1/2 of SW 1/4) of Section 27 and the East one-half of the Northeast one-quarter (E 1/2 of NE 1/4) of Section 36, all in Township 52 South, Range 35 East;
The Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter (SW 1/4 of SE 1/4 of NE 1/4) and the West one-half of the Southwest one-quarter (W 1/2 of SW 1/4) of Section 3; the East one-half of the Northwest one-quarter (E 1/2 of NW 1/4) of Section 11; the Northeast one-quarter of the Northeast one-quarter (NE 1/4 of NE 1/4) of Section 12; all of Section 16; the West one-half of the Northwest one-quarter (W 1/2 of NW 1/4) of Section 22; the West one-half of the Northwest one-quarter (W 1/2 of NW 1/4) of Section 24; the West one-half of the Northeast one-quarter (W 1/2 of NE 1/4) of Section 26; The East one-half of the Northwest one-quarter (E 1/2 of NW 1/4) of Section 33; all being in Township 53 South, Range 35 East.

Less, however, the following Tracts of The Everglades Land Company's Subdivision, as recorded in Plat Book 2, Page 1, Dade County, Florida, public records:
Tracts 111 and 112 in Section 29, and Tracts 57 and 58 in Section 31, all in Township 50 South, Range 38 East;
Tracts 79 and 80, and Tracts 109 through 112 in Section 3, Tracts 11 through 14 in Section 4, and Tracts 33 and 64 in Section 32, all in Township 51 South, Range 38 East;
Tract 56 in Section 5, and Tracts 3, 4, 45, 46, 51, 52, 57, and 58 in Section 7, all in Township 52 South, Range 38 East.

Also, less the North seven-eighths of the East one-quarter (N 7/8 of E 1/4) of Section 16, Township 54 South, Range 36 East.

The above described parcels of land, being situated in Broward County and Dade County, Florida, were estimated to contain approximately 189,000 Acres.

The Board, the Commission and the District represent and the Tribe acknowledges that access to certain parcels of Board-owned or District-owned lands within the Leased Area may be severed by lands title to which is not vested in whole or in part in the Board or the District. The Tribe agrees that the Board, the Commission and the District shall not be responsible for perfecting or guaranteeing access across lands not owned by the Board or the District located outside the Leased Area.

2. Fresh Water Aquatic Life and Wildlife Management. The Commission shall continue freshwater aquatic life and wildlife management programs within the Leased Area and the Original Reservation Tract. The Commission shall discuss and coordinate with the Miccosukee Tribe in developing freshwater aquatic life and wildlife management practices within the Leased Area and the Original Reservation Tract, and the Commission and the Miccosukee Tribe shall cooperate in the enforcement of the regulations of the Commission. Representatives of the Commission, the SFWMD and the Miccosukee Tribe shall meet at least annually (more frequently, if necessary or requested) to discuss regulations of the Commission with respect to hunting, fishing and public recreational utilization of the Leased Area. Nothing in this Lease Agreement shall grant to the general public any right of access to, or use of, the Original Reservation Tract for hunting, fishing, recreation, or any other purpose.

The activities of the Commission in freshwater aquatic life and wildlife management practices shall not interfere with or close any part of the Leased Area to any tribal use or activity, including hunting, fishing and frogging, except as provided in this paragraph. The Commission may restrict hunting, fishing, or frogging within the Leased Area when necessary in order properly to manage freshwater aquatic life and wildlife; Provided that no such restriction shall be greater than the restrictions imposed

in surrounding areas. In addition, before any such restrictions are enacted, the Commission shall consult with and discuss same with the Miccosukee Tribe. If the Commission deems it necessary to place restrictions upon the Tribe's right to hunt, fish, or frog for subsistence purposes, it will do so only after a total restriction for the taking of a particular species has been placed upon all nonsubsistence users and the need for further restriction on the taking of that species continues to exist.

3. Rights of the Miccosukee Tribe. The Miccosukee Tribe shall have the following rights:

a. Subject to the provisions of paragraph 2 of this Lease Agreement and the approval of appropriate legislation to such effect by the Florida Legislature as required in the Settlement Agreement described in paragraph 8 below, the members of the Miccosukee Tribe shall have the right during the term of this Lease Agreement to hunt and fish for subsistence purposes and to take frogs for consumption as food and for commercial purposes without restriction as to season in the Leased Area and the Miccosukee Reservation and shall not be required to purchase any license or permit from the Commission in order to exercise such rights.

In addition, the Miccosukee Tribe shall be compensated by the Commission for public hunting and fishing on the Leased Area in accordance with the formula used statewide by the Commission to determine compensation to private owners for the right to manage wild animal life and for public hunting and fishing on private lands. The Miccosukee Tribe shall have the option of accepting the annual cash amount derived from the public use payment or directing the Commission to provide other goods and services which are within the authority of the Commission and which are agreed to be of equal monetary value by both parties.

b. The Miccosukee Tribe and its members shall have the right to engage in traditional subsistence agricultural activities in the Leased Area. It is understood that revenue-producing agricultural activities on the Leased Area at this time are inconsistent with the proper use of the area as a water flowage and storage area by the SFWMD. However, should conditions change, the Tribe may seek permission from the SFWMD to engage in revenue-producing agricultural activities if such activities will not interfere with the rights and uses of the SFWMD. Approval by the SFWMD shall be pursuant to the permit procedures applicable to any private citizen.

c. The Miccosukee Tribe, and members of the Miccosukee Tribe under regulations the Tribe may adopt, shall have the right: (1) to reside in the Leased Area, including the construction of traditional homes, subject to the provisions of paragraph 6; (2) to use the Leased Area for tribal religious purposes; and (3) to take and use native materials from the Leased Area for tribal purposes, fabrication into artifacts, utensils, handicrafts and/or souvenirs for sale, subject to the provisions of subparagraph 3e below.

d. The Miccosukee Tribe shall have the right to receive fifty percent (50%) of the net revenue derived from such sale, lease, exploration, or other revenue-producing utilization of the mineral rights and interests in the Leased Area as may be allowed by the Board (except for the revenue derived from school lands pursuant to Article IX, Section 6, Florida Constitution), and the further right to require that any such mineral exploration, extraction, or other development and utilization be performed in accordance with any reasonable and acceptable method and technology which best protects the natural state and beauty of the Leased Area and which is least disruptive of the tribal uses permitted by this Agreement. The "Section 16" lands subject to

the provisions of Article IX, Section 6, Florida Constitution, are identified as follows:

Township 52 South, Range 35 East:

All of Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23 and 24.
All of Sections 4, 9, 16 and 21 East of the Easterly Right-of-Way of Levee 28.

Township 50 South, Range 36 East:

All of Section 16.

Township 51 South, Range 36 East:

All of Section 16.

Township 52 South, Range 36 East:

All of Sections 6, 7, 16, 18, and 19.

Township 53 South, Range 36 East:

All of Section 16.

Township 50 South, Range 37 East:

All of Section 16.

Township 53 South, Range 37 East:

All of Section 16 West of the Westerly Right-of-Way of Levee 67A.

Totaling 14,800 acres, more or less.

e. The purpose of this Agreement is also: (1) to preserve the Leased Area in its natural state for the use and enjoyment of the Miccosukee Tribe and the general public, as herein specified; (2) to preserve fresh water aquatic life, wildlife, and their habitat; and (3) to assure proper management of water resources.

4. Revenue-Producing Services and Facilities.

The Board, the Commission and the SFWMD agree not to erect or permit construction on lands which they own of any additional revenue-producing facilities within the Leased Area or within one-half mile of the Leased Area and the Original Reservation Tract without the prior written consent of the Miccosukee Tribe. The Miccosukee Tribe, or individual Indians licensed by the Miccosukee Tribe, shall have the exclusive right to offer airboat

rides, guide services, or other tourist services, in the Leased Area. None of these exclusive rights shall prohibit reasonable entry into the Leased Area by airboat or otherwise by members of the public for the purpose of engaging in non-commercial recreational activities; provided that such activities shall be in compliance with the provisions of this Lease Agreement and shall not interfere with the rights guaranteed to the Miccosukee Tribe and its members herein; and provided further that entry into the Leased Area by members of the public engaged in commercial recreational activities shall be subject to the consent of the Miccosukee Tribe, except commercial recreational activities ongoing upon the effective date of this Lease Agreement and registered with the Game and Fresh Water Fish Commission within one (1) year of the effective date hereof, which shall be permitted to continue at the option of the Commission and if not in conflict with the rights of the Tribe and its members under this Lease Agreement. Commercial recreational activities ongoing upon the effective date of this Lease Agreement shall be defined as those recreational activities for profit which are occurring no less frequently than once each month or twelve (12) times for the twelve (12) month period preceding the effective date hereof.

5. Limitations on Tribal Use. Subject to the provisions of paragraph 6, use of the Leased Area by the Miccosukee Tribe shall comply with all applicable laws and regulations in effect on the effective date of this Lease Agreement (including but not limited to Chapter 373, Florida Statutes), with the lawfully enacted rules and regulations of the SFWMD, both presently existing and those which may be promulgated in the future, and with all future laws and regulations not inconsistent with the rights granted the Miccosukee Tribe under this Lease Agreement. The Miccosukee Tribe shall possess no exclusive or private rights

of access to and from Alligator Alley in the Leased Area, and highway access by the Tribe shall be subject to regulation by the State of Florida and the United States.

6. Rights of South Florida Water Management District. The Leased Area has for many years comprised a portion of a large reservoir utilized for the flowage and storage of water servicing the area of Broward, Dade, Monroe and Collier Counties and designated as Water Conservation Area 3 as part of the federally authorized project of flood control and water management for central and southern Florida. The Commission and the Miccosukee Tribe agree that all of the rights set forth in paragraphs 1 through 5 and 7 are subject to and shall not interfere with the rights, duties and obligations of the SFWMD or the United States Army Corps of Engineers, pursuant to the requirements of the aforesaid federally authorized project, conveyances, easements, grants, rules, statutes, or any other present or future lawful authority to manage, regulate, raise, or lower the water levels within the Leased Area or Water Conservation Area 3, including but not limited to the Dedication from the Board of Commissioners of State Institutions of the State of Florida dated August 8, 1950.

7. Limitations on Access. The Miccosukee Tribe shall have the right to survey and mark the boundaries of the Leased Area; Provided that such boundary markers shall consist of small monuments and shall in no way limit access to the Leased Area. Upon prior written approval of the Commission, the Miccosukee Tribe shall have the right to close to public access certain areas of the Leased Area used for traditional dwelling, agricultural and religious purposes. Employees or agents of the Board, the SFWMD, the Corps of Engineers and the Commission, in the performance of their official duties, shall be exempt from any limitation on access to the Leased Area. Such Board, SFWMD,

Commission and Corps of Engineers' employees or agents shall likewise be exempt from the duty to pay any fees which may be imposed under this Agreement.

The right of public access to the Leased Area shall be regulated by the Commission and shall be limited to recreational uses, including but not limited to hunting, fishing, hiking and bird watching. Such public recreational uses shall be subject to the rights expressly granted to the Tribe by this Agreement. TheMiccosukee Tribe shall retain the right to exercise remedies authorized by law against trespassers.

8. Duration. This Lease Agreement shall become effective upon the effective date of a Settlement Agreement between the Miccosukee Tribe and the State of Florida, filed with and approved by the Court, in Miccosukee Tribe of Indians of Florida v. State of Florida, et al., Case No. 79-253-Civ-JWK in the United States District Court for the Southern District of Florida. The Miccosukee Tribe shall have no rights or interests to the Leased Area other than those expressly stated herein and in such Settlement Agreement. It is understood that the Board and the SFWMD shall retain their respective ownership of the Leased Area for all purposes including but not limited to oil, gas, water and mineral exploration and extraction, subject to provisions of paragraph 3d. The Lease Agreement shall not be terminated by the Board or the SFWMD without consent of the Miccosukee Tribe, or with respect to any portion of the Leased Area, unless for a public purpose upon payment of just compensation to the Tribe for the termination of the rights granted herein. The rights and privileges conferred upon the Miccosukee Tribe shall remain in perpetuity unless abandoned by the Tribe, but the rights and privileges granted to the Tribe by this Agreement shall not be assigned or subleased without the express permission of the Board.

9. Revocation of License. This Lease Agreement supersedes and replaces any rights, privileges, or interests the Miccosukee Tribe and its members may have possessed in the license area by reason of the action of the Board of Commissioners of State Institutions on April 5, 1960.

10. Rights of Other Indians in Lease. The Miccosukee Tribe recognizes and agrees that persons of Miccosukee Indian blood, who are not now members of the Tribe but are eligible for membership, may become entitled to share in the rights and interests granted to tribal members under this Lease Agreement pursuant to claims filed under section 5.(b)(4) of the "Florida Indian Claims Settlement Act of 1982" attached as Exhibit B to the Settlement Agreement described in paragraph 8 of this Lease Agreement.

IN WITNESS WHEREOF, the Governor and Cabinet as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the Chairman of the Governing Board of the South Florida Water Management District have executed the foregoing Lease Agreement and the Florida Game and Fresh Water Fish Commission, and the Miccosukee Tribe of Indians of Florida have caused the approval of the foregoing Lease Agreement to be executed by their respective officers thereunto duly authorized.

Entered into this _____ day of _____, 198___.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

Governor

Secretary of State

Attorney General

Comptroller

Treasurer

Commissioner of Agriculture

Commissioner of Education

Legal Form Approved
SFWMD Office of Counsel
By _____ Date 5-1-82

ATTEST:

Assistant Secretary
S.F.W.M.D.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Chairman, Governing Board

FLORIDA GAME AND FRESH WATER FISH COMMISSION

By: _____
Chairman of the Commission

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

By: _____
Chairman

Secretary

16-864 O - 83 - 9

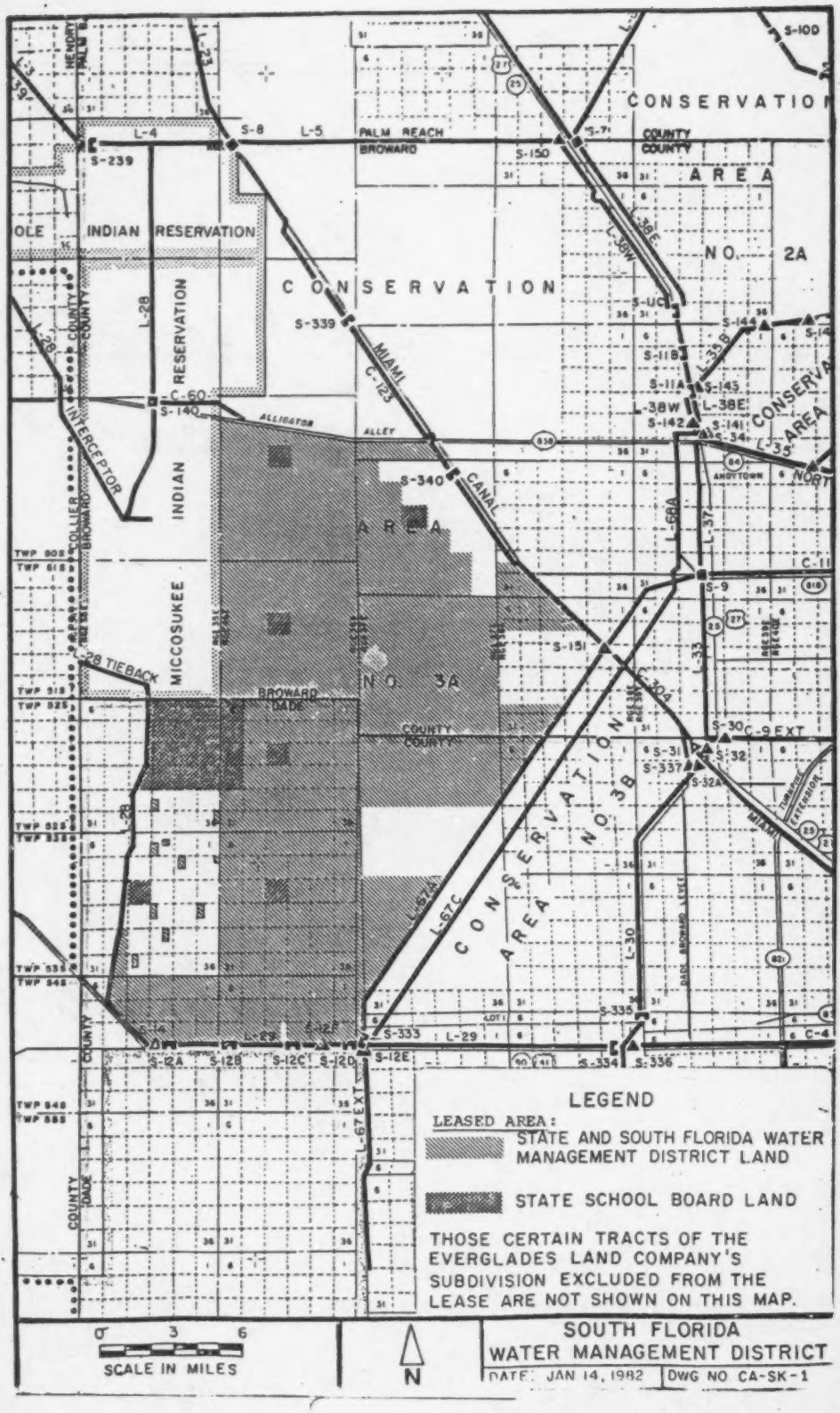
CONSERVATION AREA NO. 2A
CONSERVATION AREA NO. 3A
CONSERVATION AREA NO. 3B
INDIAN RESERVATION
MICCOSUKEE INDIAN RESERVATION
HENDRY COUNTY
COLLIER COUNTY
BROWARD COUNTY
DADE COUNTY
PALM BEACH COUNTY
MIAMI CANAL
C-123
INTERCEPTOR
ALLIGATOR ALLEY
28 TIEBACK
L-28
L-29
L-30
L-33
L-35
L-37
L-38E
L-38W
L-67C
L-67EXT
L-68A
L-73A
C-9 EXT
C-304
S-100
S-150
S-339
S-340
S-140
S-151
S-333
S-334
S-335
S-336
S-337
S-12A
S-12B
S-12C
S-12D
S-12E
LEGEND
LEASED AREA:
STATE AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT LAND
STATE SCHOOL BOARD LAND
THOSE CERTAIN TRACTS OF THE EVERGLADES LAND COMPANY'S SUBDIVISION EXCLUDED FROM THE LEASE ARE NOT SHOWN ON THIS MAP.
0 3 6
SCALE IN MILES
N
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
DATE: JAN 14, 1982
DWG NO CA-SK-1

EXHIBIT B

A BILL

To settle Indian land claims within the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Florida Indian Land Claims Settlement Act of 1982".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Sec. 2. Congress finds and declares that --

(a) there are pending before the United States District Court for the Southern District of Florida lawsuits by Indian tribes which involve certain lands within the State of Florida;

(b) the pendency of these lawsuits may result in economic hardships for residents of the State of Florida by clouding the titles to lands in the State, including lands not now involved in the lawsuits;

(c) the pendency of these lawsuits also has clouded the easement rights of the South Florida Water Management District in lands necessary for use as a water flowage and storage area, which is part of a federally authorized project for flood control and water management in central and southern Florida, and which is being used to provide and regulate a water supply for the residents of South Florida;

(d) Congress has appropriated by the Act of June 1, 1976, 90 Stat. 597, the sum of $16,000,000 in satisfaction of an award to the Seminole Nation as it existed in Florida on September 18, 1823, for the value of Florida lands taken from the Seminole Nation by the United States Government;

(e) the State of Florida and the Indian tribes have executed agreements for the purposes of resolving tribal land claims and settling the lawsuits, which agreements require implementing legislation by the Congress of the United States and the Legislature of the State of Florida; and

(f) Congress shares with the parties to such agreements a desire to settle all Indian claims in the State of Florida without additional cost to the United States.

DEFINITIONS

Sec. 3. For purposes of this Act, the term --

(a) "Miccosukee Tribe" means the Miccosukee Tribe of Indians of Florida, a tribe of American Indians recognized by the United States and organized under section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. §476, and recognized by the State of Florida pursuant to Chapter 285, Florida Statutes;

(b) "Seminole Tribe" means the Seminole Tribe of Indians of Florida or the Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and organized under section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. §476, and recognized by the State of Florida pursuant to Chapter 285, Florida Statutes;

(c) "State of Florida" means the State of Florida, its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions, and the South Florida Water Management District;

(d) "Secretary" means the Secretary of the Interior;

(e) "Lands or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(f) "Lawsuits" means the actions in the United States District Court for the Southern District of Florida, entitled Seminole Tribe of Indians of Florida v. State of Florida, et al., Case No. 78-6116-CIV-NCR, and Miccosukee Tribe of Indians of Florida v. State of Florida, et al., Case No. 79-253-CIV-JWK;

(g) "Lease Agreement" means that perpetual lease granted by the State of Florida to the Miccosukee Tribe, involving a specifically described area in South Florida, title to which is held by the State of Florida, and in which the Miccosukee Tribe is granted certain express rights and interests;

(h) [Reserved for definition, if necessary, appropriate to settlement with the Seminole Tribe.]

(i) "Settlement funds" means those amounts of money which the State of Florida has agreed to pay to the Miccosukee Tribe under its Settlement Agreement in partial consideration for the settlement of its lawsuit and the extinguishment of rights to all potential or unsettled claims which the Miccosukee Tribe may have to lands or natural resources in the State of Florida;

(j) "Settlement Agreements" means those documents entitled "Settlement Agreement between the Miccosukee Tribe and the State of Florida" executed on April 16, 198 2, and "Settlement Agreement between the Seminole Tribe and the State of Florida" executed on _____, 198___, by representatives of the State of Florida and representatives of the Miccosukee Tribe and Seminole Tribe, and filed with Secretary of State of the State of Florida, which incorporates the Lease Agreement described in subsection (g) of this section;

(k) "Transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of lands or natural resources.

FINDINGS BY THE SECRETARY

Sec. 4. Section 5 of this Act shall not take effect until the following events have occurred and the Secretary so finds --

(a) the State of Florida has enacted legislation appropriating sufficient money to pay, and in fact has paid, the settlement funds to the Miccosukee Tribe;

(b) the State of Florida and the Miccosukee Tribe have executed the Lease Agreement;

(c) the State of Florida has enacted appropriate legislation to carry out its commitments under paragraph 1b of the Settlement Agreement between the State of Florida and the Miccosukee Tribe, and has given the waiver specified in paragraph 4d of such Agreement;

(d) [Reserved for subsection covering Seminole Tribe]

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF CLAIMS AND ABORIGINAL TITLE INVOLVING FLORIDA INDIANS

Sec. 5. (a) If the Secretary finds that the State of Florida has satisfied the conditions set forth in section 4 of this Act, he shall publish such findings and the Settlement Agreements in the Federal Register, and upon such publication:

(1) The transfers, waivers, releases, relinquishments and other commitments made by the Miccosukee Tribe in paragraph 3 of its Settlement Agreement with the State of Florida shall be of full force and effect on the terms and conditions therein stated.

(2) [Reserved for paragraph covering Seminole Tribe comparable to paragraph (1).]

(3) The transfers, waivers, releases, relinquishments and other commitments validated by paragraphs (1) and (2) of this subsection and the transfers and extinguishments approved and validated by subsections (b)(1) and (b)(2) shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to

transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, and any amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfers effective as of the date of said transfers.

(b)(1) All claims to lands within the State of Florida based upon aboriginal title by any Indian, Indian nation, or tribe of Indians including but not limited to the Miccosukee Tribe and Seminole Tribe, or any predecessor or successor in interest, are hereby extinguished, and any transfer of lands or natural resources located anywhere within the State of Florida, including but not limited to transfers pursuant to the statute or treaty of or with any state or the United States, by, from, or on behalf of any such Indian, Indian nation, or tribe of Indians, including but not limited to the Miccosukee Tribe and Seminole Tribe, or any predecessor or successor in interest, shall be deemed to be in full force and effect, as provided in subsection (a)(3), provided, however, that nothing herein shall be construed as extinguishing any aboriginal right, title, interest, or claim to lands or natural resources solely to the extent of the rights or interests defined as "excepted interests" in paragraph 3(c) of the Settlement Agreement between the Miccosukee Tribe and the State of Florida.

(2) By virtue of the approval of a transfer of lands or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by any Indian, Indian nation, or tribe of Indians, including but not limited to the Miccosukee Tribe and Seminole Tribe, arising subsequent to the transfer and based upon

any interest in or right involving such lands or natural resources, including but not limited to claims for trespass damages or claims for use and occupancy, shall be regarded as extinguished as of the date of the transfer.

(3) Notwithstanding any other provision of this subsection 5(b), nothing in this Act shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State of Florida based on use and occupancy or acquired under Federal or State law by any individual Indian which is not derived from or through the Miccosukee Tribe, the Seminole Tribe, their predecessor or predecessors in interest, or some other American Indian tribe.

(4) Any Indian, Indian nation, or tribe of Indians, other than the Miccosukee Tribe and Seminole Tribe, or any predecessor or successor in interest, or any member thereof, whose transfer of lands or natural resources was approved or whose aboriginal title or claims were extinguished by paragraphs (1) or (2) of this subsection may, within a period of 180 days after publication of the Secretary's findings pursuant to subsection (a), bring an action against the State of Florida and the United States in the United States District Court for the Southern District of Florida. Such action shall be in lieu of a suit against any other person, agency, or political subdivision on a cause of action which may have existed in the absence of this subsection. In any action filed hereunder, the remedy shall be limited to: (A) a right or interest in the Lease Agreement pursuant to the terms thereof; and (B) a proportionate share in the award of $16,000,000 appropriated by Congress under the Act of June 1, 1976, 90 Stat. 597, in satisfaction of a judgment against the United States in favor of the Seminole Nation, as it existed in Florida on September 18, 1823, for the value of Florida lands.

SPECIAL PROVISIONS FOR MICCOSUKEE TRIBE

Sec. 6. (a) The leasehold interest granted the Miccosukee Tribe under the Lease Agreement shall be exempt from all State and local taxes.

(b) The lands leased to the Miccosukee Tribe pursuant to the Lease Agreement shall qualify as if such lands were an Indian reservation solely for purposes of determining the eligibility of the Miccosukee Tribe and its members for any federal health, education, employment, economic assistance, revenue-sharing, law enforcement over Indians, or social welfare programs, or any other similar federal program for which Indians are eligible because of their status as Indians and residence on an Indian reservation.

(c) The State of Florida, through exercise of the power of eminent domain, may take or diminish any interest granted to the Miccosukee Tribe under the Lease Agreement only for a public purpose and upon payment of just compensation, but such taking or diminution shall not require the approval of Congress or any executive officer of the United States.

(d) Nothing in this Act or in any grant of leasehold rights by the State of Florida under the Lease Agreement shall affect or otherwise impair in any adverse manner any benefits received by the State of Florida under the Federal Aid in Wildlife Restoration Act of September 2, 1937, 16 U.S.C. §§669-669(i), or the Federal Aid in Fish Restoration Act of August 9, 1950, 16 U.S.C. §§777-777(k).

Sec. 7. Nothing in this Act shall grant to the Miccosukee Tribe any greater rights or interests in the leased area other than those expressly set forth in the Lease Agreement, and nothing in this Act shall diminish, modify, or otherwise affect the extent of the civil and criminal jurisdiction of the State of Florida in the leased area.

Sec. 8. The Secretary of the Interior is authorized and directed to accept the transfer to the United States to be held in trust for the use and benefit of the Miccosukee Tribe of Indians of Florida of the lands authorized to be conveyed to the Miccosukee Tribe by Section 285.061, Florida Statutes, and the lands described in Dedication Deed No. 23228 from the Trustees of the Internal Improvement Trust Fund subject to the provisions of Section 285.061, Florida Statutes, and of this section.

Notwithstanding the conveyance of any lands by the State of Florida to the United States in trust for the Miccosukee Tribe of Indians of Florida, the assumption of jurisdiction in favor of the State of Florida contained in Section 285.16, Florida Statutes, pursuant to Section 7 of the Act of August 15, 1953, 67 Stat. 588, Public Law 280, shall continue in full force and effect on such lands unless the state shall retrocede such civil or criminal jurisdiction in whole or in part. The laws of Florida relating to alcoholic beverages (Chapters 561, 562, 563, 564, and 565, Florida Statutes), gambling (Chapter 849, Florida Statutes), sale of cigarettes (Chapter 210, Florida Statutes), and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the state and the state shall have jurisdiction over offenses committed by or against Indians under said laws to the same extent the state has jurisdiction over said offenses committed elsewhere within the state; provided, however, nothing hereinabove stated shall permit the exercise of the above jurisdiction by the State of Florida as to matters which 18 U.S.C. Section 1162(b) and 28 U.S.C. Section 1360(b) apply.

Such transfer of lands shall also be subject to all existing leases, easements and rights of way, and all the rights, easements and reservations in favor of the Central and Southern Florida Flood Control District, now the South Florida Water

Management District, and shall not increase, diminish, modify, or otherwise affect the extent to which Chapter 373, Florida Statutes, and its successor laws have force and effect within such lands. Such transfer shall not confer upon the Tribe or upon the lands within the reservation any additional water rights.

LIMITATIONS OF ACTIONS

Sec. 9. Notwithstanding any other provision of law, any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within 180 days after the date of enactment of this Act. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the Southern District of Florida.

REVOCATION OF SETTLEMENT

Sec. 10. In the event the Settlement Agreement between the Miccosukee Tribe and the State of Florida ever is invalidated, the transfers, waivers, releases, relinquishments and other commitments made by the Miccosukee Tribe in paragraph 3 thereof shall no longer be of any force or effect, section 5 of this Act shall be inapplicable to the lands, interests in lands or natural resources of the Miccosukee Tribe and its members as if never enacted, and the approvals of prior transfers and the extinguishment of claims and aboriginal title of the Miccosukee Tribe otherwise effected by section 5 shall be void ab initio.

Sec. 11. This Act shall take effect upon the date of its enactment.

EXHIBIT C

CHAPTER 81-204

House Bill No. 1158

An act relating to the rights of members of the Miccosukee and Seminole Indian Tribes and other Indians; amending s. 285.09, Florida Statutes, granting year-round hunting and fishing rights to the Miccosukee and Seminole Indian Tribes in their respective reservations and in the Big Cypress Preserve; granting subsistence hunting and fishing rights and frogging rights for food and commercial purposes to the Miccosukee Tribe in its reservation and in a leased area, subject to restriction by the Game and Fresh Water Fish Commission; amending s. 285.10, Florida Statutes, permitting Indians to exercise such rights without payment of licensing or permitting fees; requiring possession of identification cards when exercising such rights; amending s. 285.15, Florida Statutes, allowing the Board of Trustees of the Internal Improvement Trust Fund to grant to the Miccosukee and Seminole Indian Tribes and other Indians, rights to hunt, fish and frog for personal consumption and for commercial purposes on lands under its jurisdiction and right of access to and use of such lands; amending s. 285.17, Florida Statutes, creating a special improvement district within an area leased to the Miccosukee Tribe; providing an effective date.

WHEREAS, the Miccosukee and Seminole Indian Tribes have made certain claims for lands and other rights against the state and have filed lawsuits against the state to prosecute such claims, and

WHEREAS, it is in the public interest to settle such claims amicably and permanently between the tribes and the state, and

WHEREAS, the Board of Trustees of the Internal Improvement Trust Fund has the authority to grant certain rights to the tribes and other Indians as a part of the settlement of such claims, and

WHEREAS, it is necessary to enact legislation granting certain rights hereinafter expressed to the tribes and other Indians as a part of settlement of such claims, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 285.09, Florida Statutes, is amended to read:

285.09 Lawful to take wild game and fish any time for food; no license required.--It shall be lawful for members of the Miccosukee and Seminole Tribes ~~Indians~~ to take wild game and fish at any time within the boundaries of their respective reservations and in the exercise of hunting, fishing and trapping rights within the Big Cypress Preserve under Public Law 93-440 and under s. 380.055(8) the reservation, provided that game may be taken only for food for the Indians themselves. In addition, members of the Miccosukee Tribe may take wild game and fish for subsistence purposes and take frogs for personal consumption as food or for commercial purposes at any time within their reservation and the area leased to the Miccosukee Tribe pursuant to the actions of the Board of Trustees of the Internal Improvement Trust Fund of the state, on April 8, 1981. The Game and Fresh Water Fish Commission may restrict the exercise of these rights in the area leased for wildlife management purposes. Prior to placing restrictions upon hunting, fishing and frogging for subsistence purposes, the Game and Fresh Water Fish Commission shall totally restrict nonsubsistence uses for that particular species.

Section 2. Section 285.10, Florida Statutes, is amended to read:

CODING: Words in ~~struck through~~ type are deletions from existing law; words in underscored type are additions.

(Substantial rewording of section. See s. 285.10, F.S., for present text.)

285.10 No license or permit fees required; identification required.--Indians may exercise the hunting, fishing and frogging rights granted to them in those areas specified by s. 285.09 without payment of licensing or permitting fees. Each Indian exercising such rights shall be required to have an identification card issued without cost by the Game and Fresh Water Fish Commission through the Chairmen of the Miccosukee Tribe and Seminole Tribe. Each Indian is required to have said identification card on his person at all times when exercising such rights and shall exhibit same to officers of the Game and Fresh Water Fish Commission upon the request of such officers.

Section 3. Section 285.15, Florida Statutes, is amended to read:

285.15 Grant of fishing and hunting privileges by Board of Trustees of Internal Improvement Trust Fund; access to and use of land.--

(1) The Board of Trustees of the Internal Improvement Trust Fund of the state, in its ~~their~~ discretion, may grant exclusive hunting and fishing privileges and rights to the Miccosukee and Seminole Indian Tribes and to any other Indians who are not members of the Miccosukee or Seminole Tribes but are eligible for membership therein ~~Indians of Florida as defined in s. 285.08~~, covering lands under its administration, management, control and supervision, ~~not to exceed a term of 15 years~~. The rights granted under this section extend only to game taken by the said Indians for personal consumption, and no other license or permit shall be required, notwithstanding the provisions of any other law.

(2) The Board of Trustees of the Internal Improvement Trust Fund of the state ~~of Florida~~, in its discretion, may grant to the Miccosukee and Seminole Indian Tribes and to any other Indians who are not members of the Miccosukee or Seminole Tribes but are eligible for membership therein, ~~Indians of Florida, as defined in s. 285.08,~~ the exclusive right to take frogs for personal consumption and for commercial purposes, covering lands under its ~~the said board of trustees'~~ administration, management, control and supervision, ~~not to exceed a term of 15 years~~.

(3) The Board of Trustees of the Internal Improvement Trust Fund of the state, in its discretion, may grant to the Miccosukee and Seminole Tribes, and to any other Indians who are not members of the Miccosukee or Seminole Tribes but are eligible for membership therein, the right of access to and use of lands under its administration, management, control, and supervision.

Section 4. Section 285.17, Florida Statutes, is amended to read:

285.17 Special improvement districts; Seminole and Miccosukee Tribes.--There is hereby created a special improvement district for each of the areas contained within the reservations set aside for the Seminole and Miccosukee Tribes, respectively, and also within the area leased to the Miccosukee Tribe pursuant to the actions of the Board of Trustees of the Internal Improvement Trust Fund of the state, on April 8, 1981.

Section 5. This act shall take effect upon enactment of legislation by the United States Congress implementing the settlement agreement in Miccosukee Tribe of Indians of Florida, et al., Case No. 79-253-Civ-JWK, in the United States District Court for the Southern District of Florida.

Approved by the Governor June 25, 1981.

Filed in Office Secretary of State June 26, 1981.

CODING: Words in ~~struck through~~ type are deletions from existing law; words in underscored type are additions.

EXHIBIT D

That part of Township 49 and 50 South, Range 35 East lying Northerly within 450 feet of the right Right of Way line Westerly of survey Station 1315+67.71; Northerly within 300 feet and Southerly within 150 feet of the survey line of State Road 838, Section 86001, between survey Station 1315+67.71 and a point on a line with a bearing of South 1°16'56" East, said line being the Westerly boundary of levee #28 at survey Station 1436+73.46; and lying within 400 feet of said survey line Easterly of said Westerly boundary of levee #28 to a point on the East line of Township 50 South, Range 35 East, said right Right of Way line, said survey line, and said survey Stations described and located as follows:

Begin on the West boundary of Township 50 South, Range 35 East at a point 200 feet South of the Northwest corner thereof, thence North 88°37'49" East 1224.37 feet to the beginning of a curve concave Southerly with a radius of 17,188.73 feet, thence Northeasterly, Easterly, and Southeasterly along said curve through a central angle of 11°01'03" a distance of 3305.25 feet to the end of said curve at a point 150 feet South 9°38'52" West of said survey Station 1315+67.71 thence North 9°38'52" East 150 feet to said survey Station 1315+67.71, thence South 80°21'08" East 12,105.75 feet to said Station 1436+73.46, thence continue South 80°21'08" East 15,766.54 feet more or less to the East line of said Township 50 South, Range 35 East, thence continue South 80°21'08" East 200 feet to the end of said survey line herein described.

Containing 461.17 acres, more or less.

Senator GORTON. I understand the State of Florida has assumed that the jurisdiction over Indian tribes within the State are under the provisions of Public Law 280.

Will that jurisdictional scheme be affected by this legislation?

Mr. TUCKER. Yes, sir.

We have two parcels of land primarily involved here. One is the lease area that I referred to which title will remain in the State; and the State civil and criminal jurisdiction will continue as it is now. The Federal laws relating to Indians will have no applicability there. It will continue with full State jurisdiction.

Now, the State reservation is directed to be accepted by the Federal Government in this bill. Of course, the State will transfer the State reservation to the Federal Government in trust. The Public Law 280 jurisdiction will continue in that transfer.

In addition to the Public Law 280 jurisdiction, we have specifically included in the Federal bill a continuation of State laws relating to gambling, cigarette sales, and beverages.

Senator GORTON. That was my next question and I think I should probably for the record address this question to the attorney for the tribe.

I take it that the intent of the tribe and the thrust of the agreement to—that the tribe will abide by Florida statutes relating to gambling operations and the sale and taxation of alcoholic beverages and cigarettes?

Mr. DEAN. Yes, sir, that is the intent.

The tribe is fully willing to comply with the laws in those areas.

Senator GORTON. All right.

I would like to make some clarification of the intent of the tribe with regard to section 8 of the bill.

As I understand it, the legislation includes the language which protects the Miccosukee Tribe's governmental authority other than the sale and taxation on alcohol, cigarettes, and gambling. Is that the case?

Mr. DEAN. Yes, the purpose of 2(b), the language which follows the provision with respect to alcohol, gambling, and the sale of cigarettes, is to insure that the tribe by agreeing to this specific language has not given up governmental authority it might otherwise have or the protection of trust property. In other words, land held by the United States in trust for the tribe may not be taxed.

Senator GORTON. The State is not to tax it or the like?

Mr. DEAN. That is correct.

Senator GORTON. Could you please explain the purpose of section 8(b), 2(b) insofar as the jurisdiction of the State of Florida and the United States are concerned?

Mr. DEAN. That is the section that I was just referring to, Senator. I believe that is the one.

Nothing in subparagraph (A) shall permit the exercise of jurisdiction by the State of Florida as to any matter to which section 1162(b), title 18 or section 1360(b) of title 28 applies.

That is to insure that the language with reference to alcohol, gambling, and the sale of cigarettes does not lead down the road—we have no concern about the State's present purposes—to a State attempt to exercise jurisdiction which would undermine the tribe's authority

over its own members or the status of the title held by the United States in trust for the tribe.

Senator GORTON. I am very clear as to the latter, but how does that relate to Public Law 280?

For example, does the general criminal code of the State of Florida apply on that reservation land?

Mr. DEAN. It will apply under Public Law 280.

The origin of this language is that—and, I will give you my understanding and Mr. Tucker can then comment—the State was willing, as the tribe was, for Public Law 280 jurisdiction to be applicable to the reservation tract once it is transferred except that, because of some litigation in which the State had previously been involved—it was concerned with another tribe, not with the Miccosukee Tribe—it was concerned that the State authority with respect to alcohol, beverages, and gambling be preserved.

Senator GORTON. Public Law 280 does not extend there?

Mr. DEAN. That is right.

Therefore, this bill provides that authority and jurisdiction to the State without reference to Public Law 280. But, we did want to be sure that the protective language included in Public Law 280 also would be applicable.

Senator GORTON. So, the State will have Public Law 280 jurisdiction and it will, of course, have jurisdiction over alcohol, cigarettes, and gambling. But, it will not have any jurisdiction which is not covered by that specific alcohol, cigarettes, and gambling reference or Public Law 280?

Is that right?

Mr. TUCKER. Right.

Mr. DEAN. Right.

Senator GORTON. All right.

Thank you all very, very much.

Mr. DEAN. Thank you, sir.

Senator GORTON. With that, the hearing is adjourned.

[Whereupon, at 3:30 p.m., the hearing adjourned.]

○